Commentary
April 2000

Why the Era of Big Government Isn't Over

Christopher C. DeMuth

Haider and His Critics
Robert S. Wistrich

monopoly.com
Peter W. Huber

"Elián, Take Me With You"
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The "New Yorker": Legends of the Fall
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Are American Jews Moving to the Right?
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The Soul of Marian Anderson
Terry Teachout

Books in Review
Robert Kagan • David Singer • Arch Puddington
Adam Wolfson • James Nuechterlein

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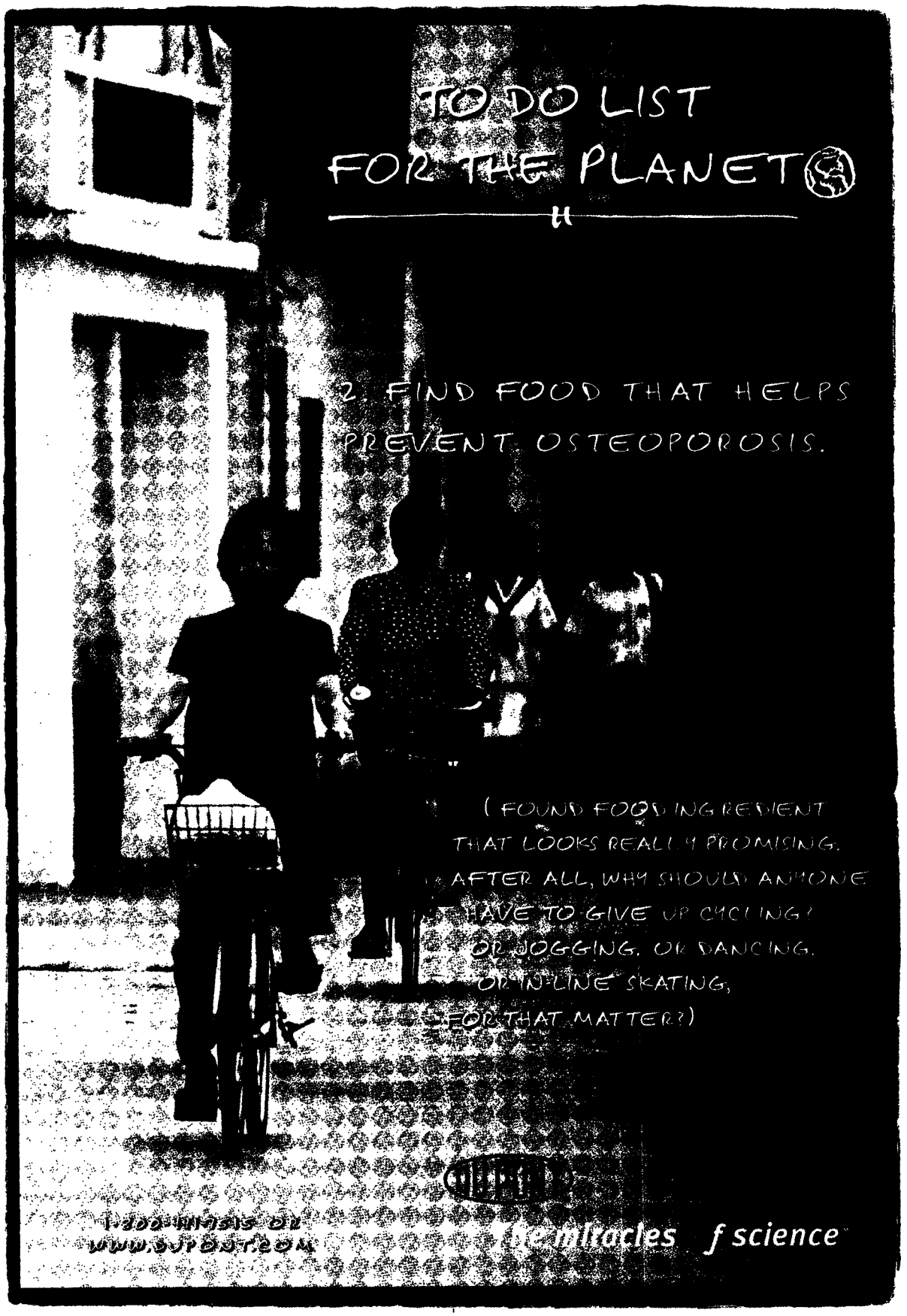

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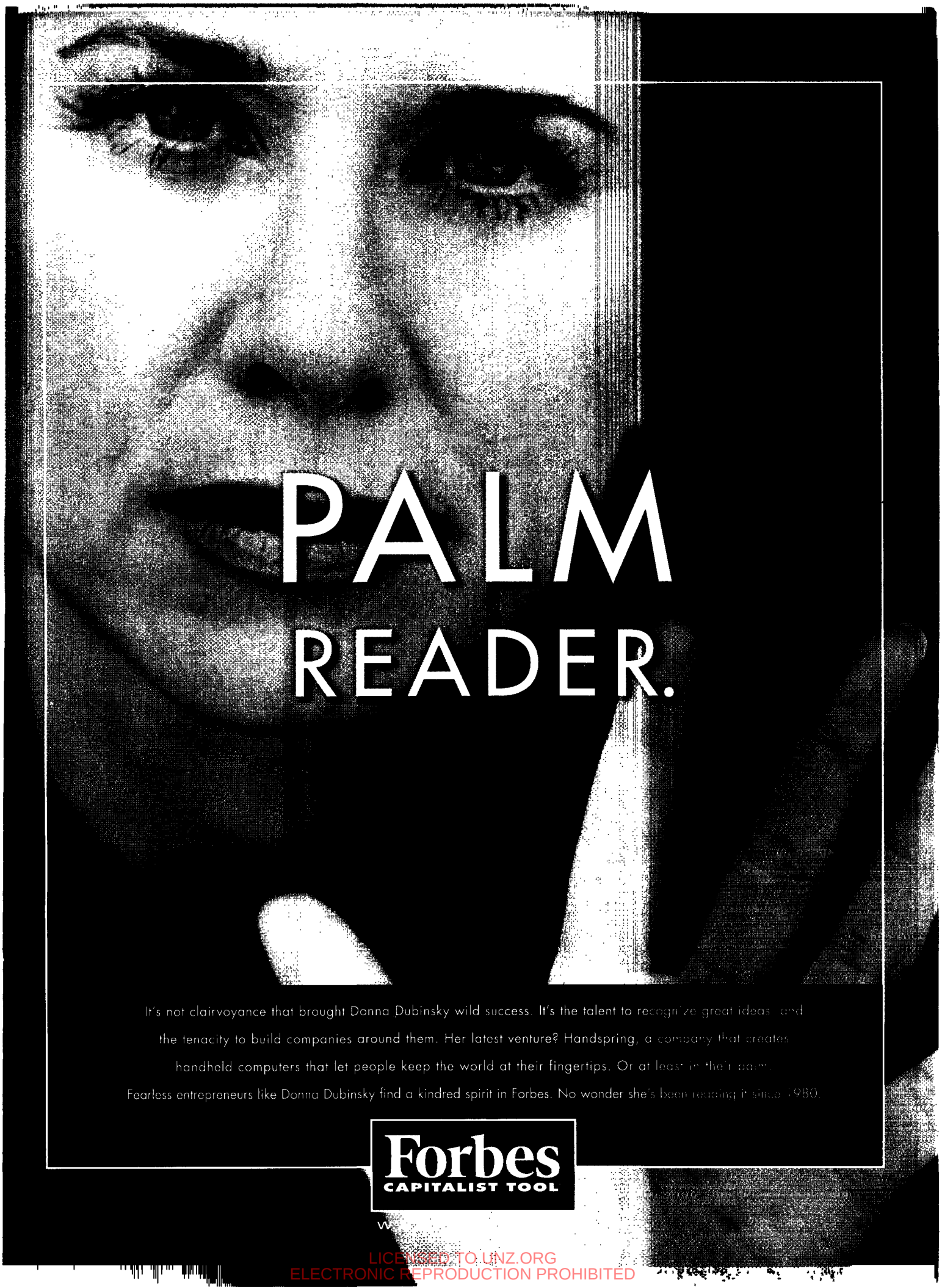

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ARTICLES

23

Why the Era of Big Government Isn't Over *Christopher C. DeMuth*
State planning is everywhere in disrepute, and yet the state grows prodigiously, undercutting the Constitution and democracy alike.

30

Haider and His Critics *Robert S. Wistrich*
As much as the rightist Austrian politician has to answer for, the European governments denouncing him may have more.

36

monopoly.com *Peter W. Huber*
Using the instrument of antitrust law against software companies like Microsoft makes no sense, until one considers the alternatives.

42

"Elián, Take Me With You" *Mark Falcoff*
A child-custody case sheds a bright light on why we still have a Cuba problem.

OBSERVATIONS

47

The "New Yorker": Legends of the Fall *Noemie Emery*
Just when did the damage occur, and who did it?

50

Are American Jews Moving to the Right? *Murray Friedman*
A distinct conservative shift is under way within a community that remains, by most measures, quite liberal.

MUSIC

53

The Soul of Marian Anderson *Terry Teachout*
A symbol of racial equality, the black American contralto deserves to be remembered above all for her artistry.

LETTERS

5
American power; the Palestinian army; modernism; jazz.

BOOKS

58 Deliver Us from Evil by William Shawcross *Robert Kagan*

60 Beyond Reasonable Doubt by Louis Jacobs *David Singer*

65 The Other American by Maurice Isserman *Arch Puddington*

71 The Trouble With Principle by Stanley Fish *Adam Wolfson*

77 Joseph McCarthy by Arthur Herman *James Nuechterlein*

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Commentary
April 2000

Letters from Readers

America Abroad

To the Editor:

Norman Podhoretz makes no mention of the return to isolationism in U.S. foreign policy following the end of the illegal war waged by NATO in Serbia and Kosovo ["Strange Bedfellows: A Guide to the New Foreign-Policy Debates," December 1999]. That war was waged because NATO found unacceptable a petty tyrant's violation of human rights as he tried to prevent part of his country from breaking away.

This interventionist policy apparently has no place in dealing with Russia's actions in Chechnya. There a *powerful* tyrant is trying to prevent part of his country from breaking away. Even though Russia, by combining a NATO-style aerial bombardment with a ground invasion, is inflicting far more damage than Serbia ever did in Kosovo, NATO and the U.S. have done nothing to stop this humanitarian disaster. Instead the U.S. has agreed that the Chechens are rebels and the war is Russia's internal affair.

It would seem that the U.S., like Great Britain, operates a two-tiered foreign policy: when dealing with a petty tyrant, any force is justified; when dealing with a powerful one, isolationism and noninterference apply. Unfortunately, Mr. Podhoretz and the neoconservatives seem to accept this.

A. Blesovsky
Brodick, Isle of Arran, Scotland

To the Editor:

Unlike Norman Podhoretz, I do not wonder at the cross-currents that have lately ruffled the neat divisions of the last century's political scene. With various dogmas and ideologies having failed in the real world, men of independent thought now fall back on a more individual frame of reference, unhindered by the rigid boundaries of political or social allegiance.

Terms such as conservative, neoconservative, liberal, and left-wing have become increasingly irrelevant. Thus, on the tragic matter of Kosovo, I find myself in the company of Henry Kissinger, the old-line Laborite Tony Benn, and Sir Alfred Sherman, a former adviser to Prime Minister Thatcher—and regretting the absence from this group of Norman Podhoretz. On the matter of, say, abortion, I find myself with a quite different set of bedfellows.

This shift is a welcome and hopeful sign for a world facing a bewildering and, in many ways, frightening future.

M.J. Cohen
London, England

To the Editor:

Norman Podhoretz has offered a useful guide for understanding foreign policy in the new era, but the distinction he draws between isolationism and internationalism is quite fruitless. Thus, there are those who supported the war with Iraq but opposed the war with Yugoslavia, and those who protested against Operation Desert Storm but then demanded an attack on Serbia. Which of the two groups is isolationist and which is internationalist?

But another two-dimensional scheme offered by Mr. Podhoretz provides an excellent instrument for analysis. At one end of the spectrum is the position of Ronald Reagan, who melded defense of U.S. national interests with a universalist democratic ideology. At the other end one finds a "humanitarian liberal" like Anthony Lewis who deprecates the idea of national interests entirely. Paradoxically, Reagan's policy won the cold war and was thereby vindicated, but the position of Anthony Lewis, as implemented by the Clinton administration, has prevailed.

The first Clinton war was fought—in Somalia—not on the grounds of national interests. It turned out to be a

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farce, ending in a handful of American casualties followed by a shameful withdrawal. Clinton's second military action—reinstalling Jean-Bertrand Aristide, the Marxist president of Haiti, has done little or nothing, or worse than nothing, to cure that country of its chronic chaos, while also hardly advancing U.S. national interests.

The U.S.-led war against Serbia was in the same left-wing "humanitarian" tradition. Its primary result was to ruin relations with two countries, Russia and China, that are critical players, not to mention creating immense difficulties with countries like Greece that are not quite so important. Before the war, as opinion polls show, more than 70 percent of Russians regarded the U.S. positively. Afterward, 80 percent came to view it negatively. The Russian public simply cannot understand why the United States dropped some 32,000 bombs on the heroes of southeastern Europe, the only nation to withstand both Hitler and Stalin. Neither can they understand why we have created a new Muslim country in the Balkans that is effectively run by a terrorist organization, the Kosovo Liberation Army. In the final analysis, the United States fought the war for reasons that have more to do with the agenda of contemporary liberalism than with anything else.

BORIS GULKO
Fairlawn, New Jersey

TO THE EDITOR:

In the spirit of Norman Podhoretz's insightful essay, I would like to add one bit of evidence. Mr. Podhoretz points out that "when John Quincy Adams cautioned against going 'abroad in search of monsters to destroy,' he was not thinking of driving foreign merchants out of business." Actually, Adams tended even less to isolationism than Mr. Podhoretz implies.

Many people quote the strictures Adams expressed in 1821 against entangling the U.S. in European politics. A few years later, however, he also cautioned against isolationism. Remarking upon George Washington's famous admonition that Americans should have "as little political connection as possible" with Europe, Adams argued in 1826 that this should be understood as prudent advice for Washington's day, not an eternal rule for American foreign policy:

> [T]he counsel of Washington in that instance, like all the counsels of wisdom, was founded upon the circumstances in which our country and the world around us were situated at the time. . . . [But] compare our situation and the circumstances of that time with those of the present day, and what, from the very words of Washington then, would be his counsels to his countrymen now?

Adams went on to say that America's situation was still such that relative non-engagement in European political affairs remained a prudent policy, but, he argued, the U.S. did have a duty to the new republics in South America. With them, he observed, "we have an immensely growing commercial, and must have and have already important political, connections," respecting which the U.S. could be "neither distant nor detached." Moreover, their "political principles and systems of government . . . must and will have an action and counteraction upon us and ours to which we can not be indifferent if we would."

One can hardly doubt what Adams would advise in today's world, and what he would think of the recent resurgence of isolationism.

RICHARD A. SAMUELSON
Charlottesville, Virginia

TO THE EDITOR:

The symposium on U.S. foreign policy that followed in the wake of Norman Podhoretz's article failed to confront the moral objections to our "humanitarian" intervention in civil conflicts ["American Power—For What?," January]. Most

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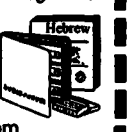

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contributors treat the question as if it were only prudential: a matter of whether such intervention serves our interests, overtaxes our resources, or antagonizes other nations. The prevailing assumption seems to be that if we have the power to mount an effective armed attack against a grave evil in another country, we certainly have the right to do so.

But military intervention in another nation's domestic affairs imposes the intervenor's will by force and violence. It has neither the justification of self-defense nor the consent of the country where it occurs. The U.S. may have a noble purpose when it intervenes—promoting democracy, preventing genocide, or stopping a war—but the moral question is whether the ends justify the means.

It is easy for television viewers, watching carnage and destruction in another country, to think that their anger and compassion endow them and their government with the moral right to wage war. But anger and compassion are no guarantee of the wisdom and virtue required to solve another country's internal problems. We should not claim a right to do to others what we would never let others do to us.

CURTIS CRAWFORD
Charlottesville, Virginia

TO THE EDITOR:

The participants in COMMENTARY's symposium on foreign policy do not adequately address the major challenge facing the world in the new century—the breaking-apart of nations as a result of ethnic conflict. These "civil wars," as they are euphemistically called, are being waged in many parts of Africa, Asia, and Latin America, and yet neither the UN nor the U.S. has done anything tangible to bring them to an end.

These conflicts may not have a direct bearing on American national security in the narrow sense, but the United States cannot escape the consequences. If Russia disintegrates, for instance, the resulting chaos will trigger the exodus of refugees to Europe and eventually to the U.S.

The 21st century will surely see more of these conflicts. They remain intractable because modern methods of warfare cannot be applied to them. When neighbors are killing each other, high-tech weapons cannot distinguish victims from perpetrators. Only mobile ground forces can stop the mayhem by disarming the miscreants. But this will entail considerable combat casualties—an unacceptable price for Western militaries that have grown used to having none.

MAHMOOD ELAHI
Ottawa, Canada

TO THE EDITOR:

In COMMENTARY's recent symposium on foreign policy, almost all of the commentators who support the "activist" position find themselves pleasantly surprised by the seeming reversal of their erstwhile opponents in the Democratic party and the left-liberal intelligentsia. They attribute this to Bill Clinton's success in somehow bringing the Democrats back to the center.

But the most obvious explanation for this shift is partisan politics. Had a Republican President undertaken any of the military adventures of Bill Clinton, he would never have received the support of Democrats or liberal journalists.

The overwhelming goal of the Democrats after their near-death experience in 1994 has been the preservation of the Clinton administration. For them, foreign policy is secondary to the domestic struggle. On the real foreign-policy issues—building a missile defense, restoring funding to our hollowed-out military, supporting historic allies like Taiwan—the Democrats and their followers have been consistently in the opposition.

DENNIS TRAVIS
Glenn Head, New York

NORMAN PODHORETZ writes:

I made no mention of Chechnya because the war

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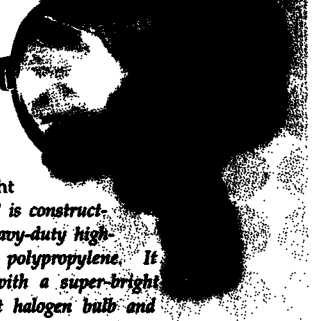

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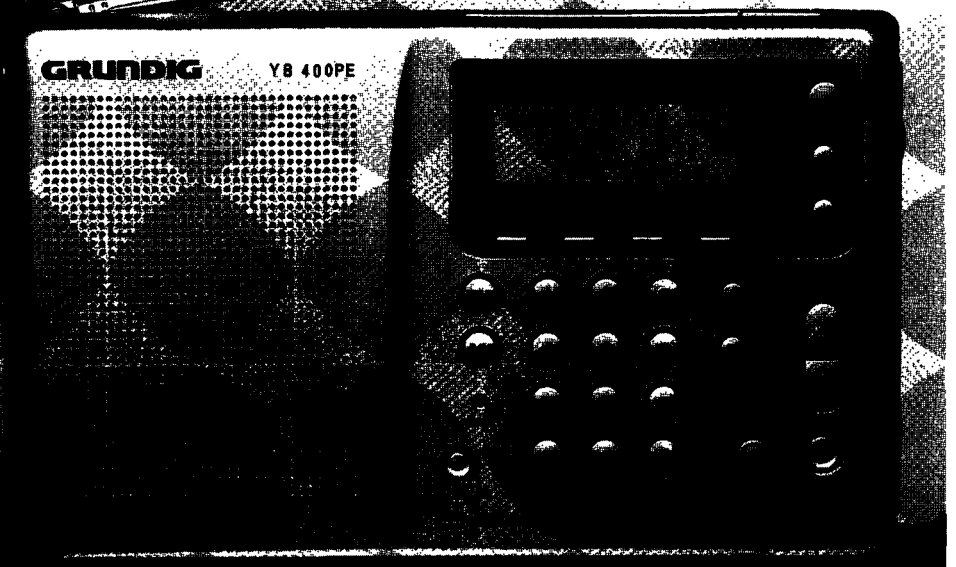

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there had only recently been resumed when I wrote my piece and the course it would take was far from clear. Still, A. Blesovsky is right about the "two-tiered policy" being followed by the United States. In my article, I cited Charles Krauthammer's strong approval, as a realist, of precisely such a policy with respect to East Timor. But, not being a member of the realist school of thought, I did not endorse Krauthammer's position myself. Lately, I have signed a statement calling for stronger measures than have so far been taken against the Russians for the horrors they have perpetrated in Chechnya. These measures, admittedly, do not include military action on the part of the West, but (at least so far as I am concerned—I cannot speak for the other signatories of the statement) the reason for that is prudential rather than moral.

I agree with M.J. Cohen about the decreasing relevance of the old political categories in the discussion of foreign policy (though not on domestic issues). But I cannot agree that an ad-hoc, case-by-case approach is the best way to go. Indeed, so strong is the human mind's need for the anchor of principle, and for consistency in the conduct of affairs, that as time moves on and the nature of the new post-cold-war world gradually reveals its special peculiarities and contours, a new set of coherent positions is bound to emerge that will guide advocacy and throw their respective adherents into a new round of heated debates. Moreover, these new positions, while no doubt differing in certain aspects from the old liberal-conservative or Right-Left divide, will almost certainly carry its genetic inheritance, and each of the new mutations therefore will bear a clearly recognizable family resemblance to its ideological ancestors.

Much the same holds for the isolationism-interventionism conflict. Boris Gulko makes a strong argument for the obsolescence of this taxonomy, just as Mr. Cohen does in the case of the liberal-conservative antithesis. As I tried to make clear in "Strange Bedfellows," I am still a Reaganite as Mr. Gulko defines the term, and I have no use for the kind of humanitarian intervention which justifies itself to the degree that it does *not* serve U.S. national interests. In general, I also agree with Mr. Gulko about the futility of such interventions. In fact, I would go further and suggest that they are probably only the form left-wing isolationism is temporarily taking at this confused moment.

I do not, however, agree either with him or with "the Russian public" that the admirable record of the Serbs in World War II, or the resistance of Tito to Stalin, should have given them a license to commit atrocities against the Bosnian Muslims or to "cleanse" Kosovo of its Muslims, which Milosevic was beginning to do when we intervened.

I thank Richard A. Samuelson for his interesting and illuminating addendum to my remark about John Quincy Adams.

Since the letters from Curtis Crawford, Mahmood Elahi, and Dennis Travis are not addressed to my article, but rather to the symposium that was triggered by it, I think it inappropriate for me to respond to them. I will say this much, though: a few of the remarks I make above may have some bearing on some of the points these letters raise, and in "Strange Bedfellows" itself, answers (either implicit or explicit) to others can be found by any reader who might wish to take the trouble to look for them.

Is Israel Secure?

TO THE EDITOR:

Yuval Steinitz presents a valid scenario, but his analysis is absurd ["When the Palestinian Army Invades the Heart of Israel," December 1999]. He is, after all, talking about the recruitment by the Palestinians of 4,000 men for what is essentially a suicide mission. Whatever damage these guerillas might cause, almost none of them would get out of Israel alive. That is a significant recruitment problem.

Though an attack by such units would certainly add to the problems of mobilizing Israel's reserve forces, it would hardly be "decisive." Assuming 200 teams of Palestinian commandos, if half of them reached their targets and half of those actually succeeded in doing damage, just 50 locations within Israel would be harmed. Moreover, with its economic prosperity and a Jewish population now reaching more than five million, Israel could easily increase the size of its standing army so as to be less reliant on reserves. This is particularly true if a small part of this larger army were used for the relatively inexpensive task of enhancing the defense of key bases.

But the weakest point of Mr. Steinitz's analysis is his complete omission of a deterrence factor. By participating in massive sabotage in concert with a general Arab attack, the Palestinians would face the strong likelihood of a second expulsion, since recent analyses have found Israel's military advantage over the Arab states to be greater than ever. After its likely victory, Israel, having made concessions for peace, would have the moral right to transfer Palestinians en masse from the West Bank. Surely the Palestinians understand this.

JACK HALPERN
New York City

TO THE EDITOR:

Two things may protect Israel from the military danger that Yuval Steinitz describes. First, the Palestinians have not yet shown themselves capable of carrying out such a demanding attack. They are getting better, however, and it is not advisable to rely on the weaknesses of your enemy.

Second, if the Palestinians tried such a attack and it failed, it is possible that in the heat of battle, Israel might push most of the Arab population of Judea and Samaria to the other side of the Jordan. Israel would thereby annex the remainder of mandatory Palestine. But the overwhelming majority of Israelis have already demonstrated that they would rather give up a major share of the land to which they have historic and legal claims than move more than a million Arabs out of the way. And so, even in the aftermath of a bitter battle—in which Palestinians

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had invaded Israel, killed thousands of Israeli civilians, and severely threatened Israel's survival—it is unlikely that Israel would respond by moving Palestinians out of the area conquered in the 1967 war.

Of course, the Palestinians may not have such a high estimate of Israeli patience. They may well think that if they tried the kind of attack Mr. Steinitz describes and failed, Israel would act toward them as they themselves would act toward Israel. In other words, they might be deterred by the possibility of losing their position in Judea and Samaria.

Still, such deterrence is a thin reed on which to rest Israel's security.

MAX SINGER
Jerusalem, Israel

TO THE EDITOR:

Israel's military vulnerability is even more serious than what is outlined by Yuval Steinitz. As he notes, Israel's alarming position is a result of the Munich-like Oslo accords that the country's leaders have been carrying out unilaterally. Prime Minister Ehud Barak ridicules the idea of reciprocity as "Bibi-speak," and wants Israel to be separated from its Palestinian neighbors only by an elaborate system of easily penetrated fences. If his vision of "peace" is realized, Israel will become a defenseless and waterless coastal enclave—little more than a well-armed ghetto.

The next war will begin the minute the Arabs think they can win. Hostilities will likely be initiated by Yasir Arafat and immediately joined by Israel's Arab neighbors, including Egypt, which the Clinton administration has armed to the teeth with the latest American weapons. The *Jerusalem Post* and *Jane's World Armies* report that Egypt will soon receive over 10,000 rounds of 120-millimeter depleted-uranium ammunition for its 555 American M1 Abrams tanks. These shells can punch through the armor of any Israeli tank. The administration has also agreed to sell Egypt 200 more M1 Abrams tanks and the most advanced fighter planes and naval vessels in the U.S. arsenal. Egypt will be armed with defensive and offensive weapons systems that even Israel does not have—all paid for by the U.S.

Egypt has also recently conducted practice crossings of the Suez Canal, constructed bridgeheads on the canal's east bank, and transferred units of four army divisions to the Sinai. When Israeli intelligence officers complain about these serious violations of the Camp David accords, the Clinton administration, and their own government, tell them to stop making the Egyptians angry and increasing tensions in the region.

Thanks largely to Bill Clinton, the technological edge Israeli forces once enjoyed is now gone. Even more ominously, Israel's military and political leaders have ruled out a preemptive strike in the next war because they fear that America and "the world" would blame Israel for starting the conflict.

GEORGE E. RUBIN
New York City

TO THE EDITOR:

Yuval Steinitz ably paints a stark picture of the dangers Israel has courted by surrendering its crucial defenses since the Oslo accords. Mr. Steinitz quotes Shimon Peres who (apparently in a previous incarnation) warned that Israel's narrow "waist" would be

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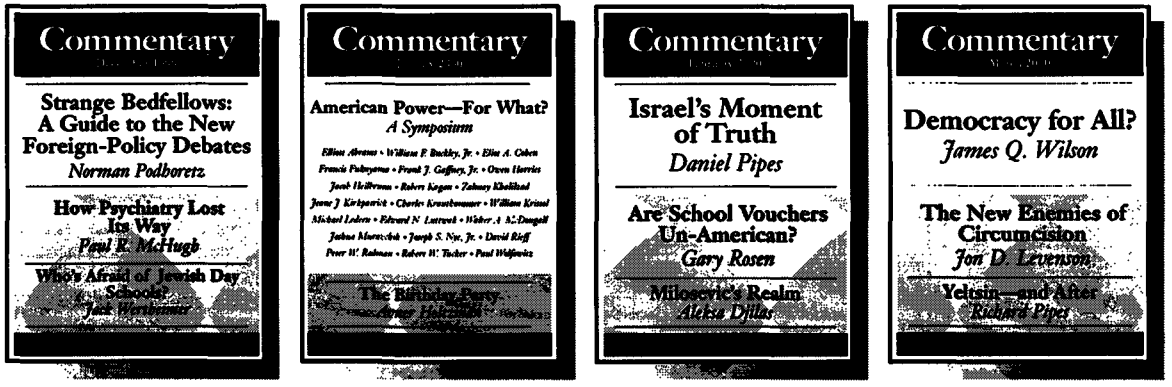

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vulnerable "to a collapse by a well—organized surprise attack." It should be remembered just how incredibly narrow that "waist" is.

Not very far east of the coastal town of Herzliya is the large Samaritan Arab town of Qalkilya, one of the centers in which, Mr. Steinitz notes, Arafat has large concentrations of heavily armed "police." On May 31, 1967, the Cairo daily *Al Akhbar* observed that "Jordanian artillery, coordinated with the forces of Egypt and Syria, is in a position to cut Israel in two at Qalkilya, where Israeli territory between the Green Line and the Mediterranean Sea is only twelve kilometers wide." That amounts to seven-and-a-half miles, and a slow car takes ten minutes to drive it. With good reason did *Al Akhbar* gloat that "Israel could yet find herself in the vise of a nutcracker."

Jordan was eliminated as a military threat during the first few days of the 1967 war. At present, relations with its Hashemite ruling family are coolly correct. The "vise of a nutcracker" is now wielded by Arafat and his PLO police army in Samaria to the east and Gaza to the west, with eager allies in other Arab countries waiting in the wings.

No other country in world history has voluntarily given away vital areas of its own territory to neighboring enemies sworn to destroy it, and thus abandoned its strategic defenses. But that, with the encouragement of American presidents from Carter to Clinton, is the tragic path Israel has chosen in the twenty years since 1979.

DAVID L. HURWITZ
New York City

TO THE EDITOR:

Yuval Steinitz's analysis of the dangerous situation in which Israel now finds itself is clear, timely, and, in my view, incontrovertible. In considering the question of the Golan Heights, however, which he puts in its true strategic context, we should take into account political as well as military realities.

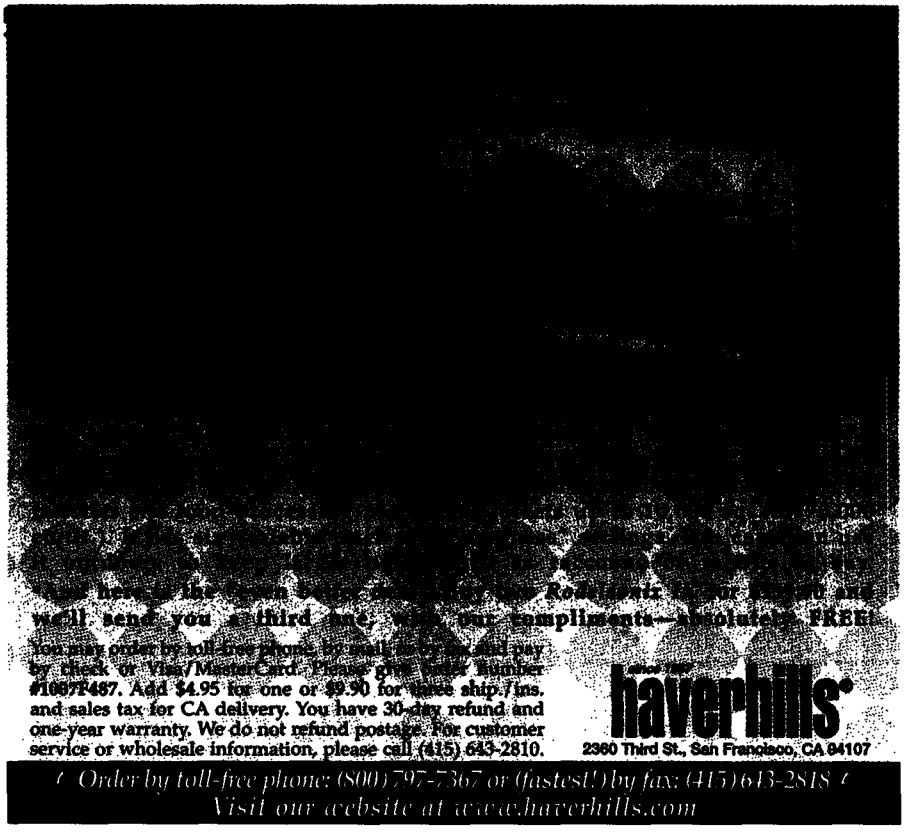
The negotiations that are being forced upon Israel by the White House and the State Department are not negotiations between Israel and Syria. They are negotiations between Israel, as represented by its elected government, and Hafez al-Assad, as represented by himself. Assad is answerable to no one—certainly not to the Syrian people, whom he has never consulted in any matter whatsoever—and has never wavered in his desire for a "Greater Syria" under his own control. It may suit him, from time to time, to decorate one of his vassals with the quaint title of "foreign minister" and mount a pretense of diplomacy. But such diplomacy is war by other means. In such a context there is only one question concerning the Golan Heights that makes the slightest sense—namely, is Israel defensible without them? It seems to me that the answer is no.

ROGER SCRUTON
Brinkworth, Wiltshire, England

YUVAL STEINITZ writes:

Jack Halpern is right to say that my COMMENTARY article omitted a discussion of the "deterrence factor," and that it treated only the Palestinians' abilities and not their intentions. The fuller Hebrew version of the article, which appeared in the November 1998 issue of *Nativ*, included an entire section on deterrence—with a detailed warning against relying on supposed Palestinian fears of a possible Israeli retaliation. Here let me mention three brief points.

First, Palestinian thinking will assuredly be influenced not only by considerations of what Israel may or may not do but also by pressures, and implicit threats of retaliation, from *Arab* states (Egypt, for instance) should the Palestinians fail to do their part at a time of full military confrontation. It is hard to say which side's "deterrence" would be the more effective.



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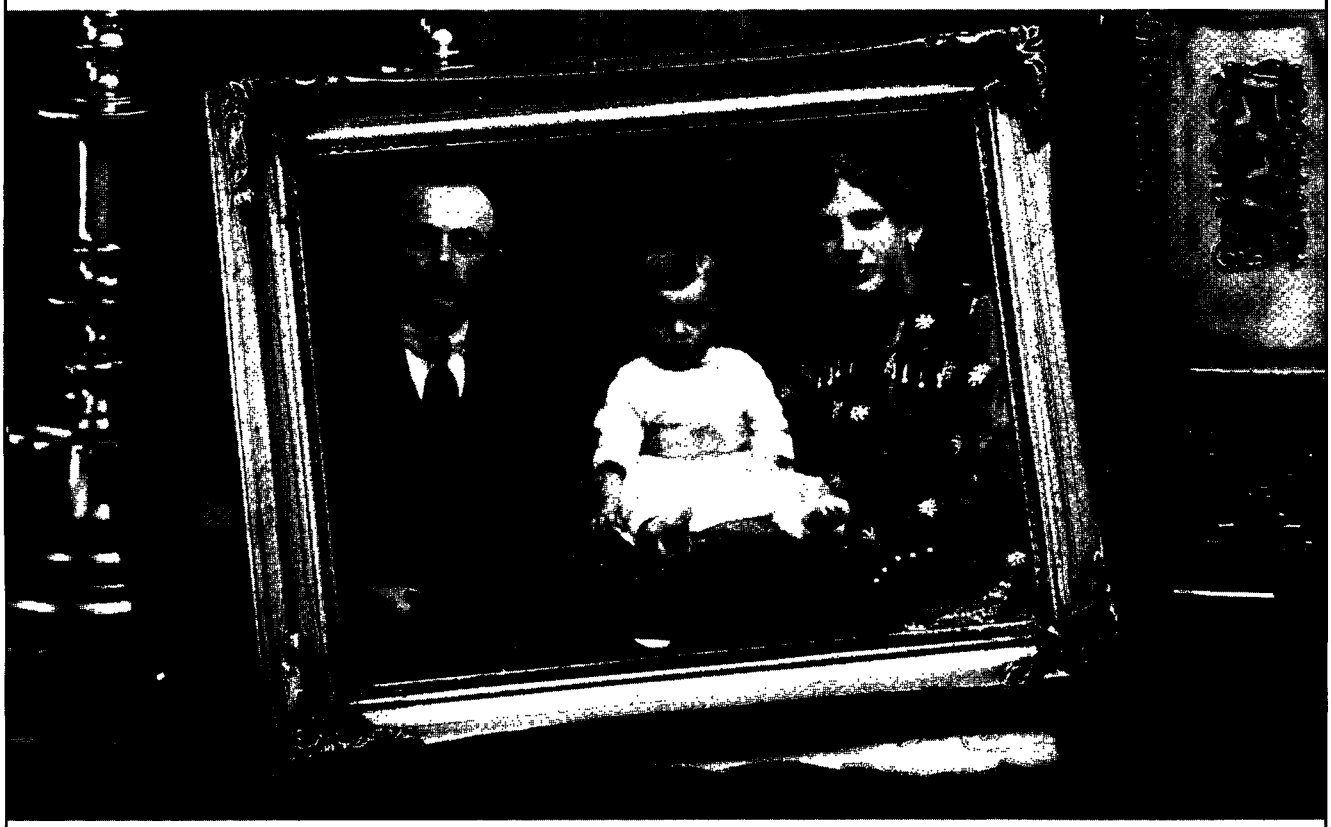

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Second, I do not share Mr. Halpern's confidence in the "strong likelihood of a second [!] expulsion" in the event of an Israeli victory. Whether Israel itself would feel it has the "moral right" to take such a drastic action is highly doubtful, even leaving aside the inevitable international reaction.

Third, Israel has, in fact, relied on deterrence—or what might be called the-Arabs-wouldn't-dare scenario—quite often in the past, only to find itself severely burned. Thus, prior to the 1973 war Israel believed that its vaunted ability to destroy the entire Egyptian infrastructure from the air would deter Egypt from the folly of a full-scale armed confrontation. Again, after the 1993 Oslo accords, Israelis comforted themselves with the thought that the Palestinians, aware as they had to be of the likely Israeli response, would never permit terrorist acts against the Jewish state or its civilians. In both these cases—more could be cited—such expectations proved completely groundless.

Since I agree with much of what Max Singer has to say (and he echoes my thoughts on deterrence), let me confine my remarks to his first point, concerning current Palestinian abilities. In the opinion of Israeli experts who read the Hebrew version of my article, including high-ranking officials in the Defense Ministry, Palestinian forces as presently constituted have clearly possessed the capacity to carry out such an attack for three years now, and they are only getting better. Of course, my article deals with a worst-case scenario, but worst-case does not mean inconceivable. In order to minimize the chances of such a scenario's unfolding, it would be incumbent on Israel to change extensively both the way it thinks about its security in general and the way it evaluates particular risks.

This brings me to George E. Rubin. As it happens, although I am in the opposition in Israel I dissent from his sharp criticism of Ehud Barak on the question of separation. In the impossible situation created by Oslo, an agreement that would bring about a separation between Israel and the Palestinians strikes me, for military and geopolitical reasons that I need not go into here, as the lesser of two evils—so long as the borders, especially in West Samaria, are "closed," and the hill country contiguous with the coastal plain, the Tel Aviv area, and the Jerusalem corridor remains in Israel's hands.

As for Egypt, its military condition is indeed a matter of deep concern, and it does also look as if the U.S is helping that country prepare to confront Israel. And now the prospect looms of the same thing happening if a peace agreement is reached with Syria. In that event, not only will Israel lose its northern shield—the Golan Heights—but Syria, rearmed with modern weapons thanks to American economic and military aid, will in short order pose a much more effective threat than it does today (also against Turkey, a member of NATO). The thought that in a few years' time Israel may be facing M1 Abrams tanks and F-16 fighters in the north in addition to, or in combination with, a formidable Egyptian military and Palestinian guerrillas leaves me sleepless.

David L. Hurwitz and Roger Scruton offer still more arguments, both strategic and political, that strengthen my comments about the consequences of the Oslo accords. I thank both of them, as well as my other correspondents, and I hope that the discussion begun in the pages of COMMENTARY will help bring about a greater public awareness of Israel's essential security needs and sensitivities.

Bad Art

TO THE EDITOR:

Steven C. Munson does a commendable job of characterizing the recent exhibition at the Brooklyn Museum and of enumerating the shortcomings of some of its individual pieces ["Art, Excrement, and *Sensation*," January]. Still, even while accurately describing the nature of the problem that infects the contemporary art establishment, he fails to understand and explore the roots of that problem. This failure emerges at the article's conclusion, with Mr. Munson's respectful references to the "values of 20th-century modernism," the importance of modernist "sightlines," and "the great Russian abstract painter," Kandinsky.

Mr. Munson would like to interpret the current morass as the result of a revolution against the modernism that he appears to esteem. To the contrary, it is more likely that the breakdown of traditional artistic and cultural values that began in the early 1900's—with, among many others, Kandinsky—has simply hit bottom. Today's crop of pretenders did not materialize suddenly from nowhere. They were schooled on the progression, or regression, of modernism; and their descent was facilitated by the momentum of what preceded them.

That the bottom may finally have been reached has to be taken as a positive sign. From here, unless the choice is to stagnate in darkness, there is no place for art to go but up; and there is nothing better than a dynamic, embracing, updated version of traditional artistic and cultural values to light the way.

HARVEY GORDON
Kalamazoo, Michigan

TO THE EDITOR:

Though Steven C. Munson writes about the motives behind the *Sensation* exhibit at the Brooklyn Museum, and emphasizes that aesthetic values were not used in selecting its pieces, he does not take the next step and try to define art. This absence of a clear definition of art is the current standard, but it leaves us unable to render judgment in these matters.

What, then, do unchallenged examples of great art share? They are, in the first place, man-made and done in deliberate fashion. In addition, they have to impress the viewer technically—that is, they must reflect skill beyond the ordinary—and they must produce a visceral impact on the viewer. These three attributes alone are sufficient to define art, but for art to be great, a fourth is needed: originality. There is a tendency in modern criticism to accept originality as a sufficient criterion for art. But if originality is the sole requirement, then any impulse becomes an

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There is persistent pressure on Israel, mostly from the Arab states, of course, but also from such good friends as the United States, to bring "sacrifices for peace." It is understood that these "sacrifices"refer to greater "flexibility" in dealing with the Arabs, but mean primarily that Israel should allow its dismemberment, in order to bring peace to the region.

What are the facts?

A Bizarre Concept. The concept to bring "sacrifices for peace" is a new one that has never before found application in world history. It was created by Arab propaganda to induce Israel to agree to its dismemberment, to give strategic assets to those who are determined to destroy it, and to allow such self-destructive events as the creation of a hostile state in its heartland and the division of its capital.

Since its creation in 1948, Israel has been subjected to almost constant Arab terror, to unceasing Arab aggression, and to three major wars. Israel emerged victorious from each of these wars. In the Six-Day War, it recovered its heartland of Judea/Samaria (the "West Bank") and the eastern part of Jerusalem, its capital city, that had been occupied by the Jordanians; it captured the Golan Heights from Syria, which had been used for decades to shell and spread terror over much of northern Israel; and it conquered Gaza and the Sinai Desert that had been used by Egypt as staging ground and invasion route to Israel.

Many Sacrifices for Peace. In order to achieve peace with its neighbors, Israel brought sacrifices for peace that have no precedent in the history of the world. For peace with Egypt, Israel returned the entire Sinai. There is little thanks on the part of Egypt for this generosity and this sacrifice for peace. In the over 20 years since the peace treaty between Egypt and Israel was signed, Egypt has still not established normal channels of cultural and commercial relations with Israel. The controlled Egyptian press spews daily anti-Israel venom. President Mubarak has never visited Jerusalem. It is the coolest possible peace. A sacrifice for peace brought in vain—probably a major act of folly on the part of Israel.

Israel made sacrifices for peace by signing a peace treaty with Jordan. In that peace, Israel granted Jordan a large yearly allowance of fresh water from its own dwindling and meager resources and accepted a petty demand for "border rectification"—yielding of land. That peace is almost as cold as that with Egypt.

As for Syria, no offered sacrifice for peace seems to be sufficient to satisfy its dictator, President Hafez Assad. Nothing will satisfy him and he is unwilling to consider even an ice-cold peace, except on terms of Israel's total surrender of the Golan Heights. Unfortunately for Israel and for the world, the current Israeli government seems to be seriously considering such a "sacrifice for peace".

Here are three good sacrifices that the Arabs could bring for peace: (1) Abandon the insistence on recovering the Golan; (2) Stop the clamor about the division of Jerusalem; (3) Disarm the Palestinian "police".

The greatest sacrifice for peace that Israel has brought was the resuscitation of the bankrupt and moribund PLO terror organization and the acceptance of its "chairman" Yasser Arafat as a negotiating partner. In this ill-advised process, foisted on Israel by world pressure and by a previous government, Israel has made far-reaching and existential sacrifices and concessions. It has yielded control of the Gaza Strip and of all major "West Bank" cities to the Palestinian Authority and has agreed to detailed plans to grant further autonomy to the Palestinians. In what is probably the ultimate folly in this process, Israel has tolerated the formation of a Palestinian "police force" (actually an army) of 40,000 men—the largest police-to-population ratio in the world (!)—and has equipped this "police force" with a complete arsenal of automatic weapons. As the world now knows, these weapons were turned on Israeli soldiers and civilians at the very first opportunity that the Palestinian leaders provoked.

The Arab countries, not Israel, are the oppressors in the Middle East; it is they who are killing peace. The PLO, apart from the bloody crimes that it has committed against Israel, has ordered massacres of over 100,000 Lebanese civilians between 1982 and 1990. It has now established a virtual dictatorship in the territory allotted to it—torture and terror are the order of the day. In Egypt, thousands of Copts have been killed and their churches burned. President Assad of Syria has occupied Lebanon and has killed and tortured thousands. Iraq, under its dictator Saddam Hussein, is a rogue state attacking its neighbors and killing its own citizens, including with poison gas. Saudi Arabia is a monarchical tyranny. It prohibits the exercise of any religion except the most orthodox form of Islam. Jews are not allowed in the country. Christians are jailed or worse. Sudan is engaged in the systematic slaughter and enslavement of its black African people. How strange that nobody asks the Palestinians or any of the Arab states to bring any sacrifices at all for peace. Only Israel, an island of peacefulness and civility in that ocean of violence and turmoil, is incessantly being asked to bring such sacrifices. Here are three good sacrifices that the Arabs could bring for peace: (1) Abandon the insistence on recovering the Golan; (2) Stop the clamor about the division of Jerusalem; (3) Disarm the Palestinian "police." Billy clubs are good enough for London Bobbies. Why should any more be needed to patrol Nablus, Hebron and Bethlehem?

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artistic one. This is the source of our current confusion, and of the exhibition at the Brooklyn Museum.

ARNOLD FLICK
La Jolla, California

TO THE EDITOR:

Writing of the controversy concerning the use of elephant dung in Cris Ofili's painting *The Holy Virgin Mary*, Steven C. Munson informs us that "the use of such excretions in the creation of art objects is old hat." For a century or so, modernists have tried to shock the public. But shock wears off, and nothing remains but boredom.

One person responded to the showing of *Sensation* the way he was supposed to: Mayor Rudy Giuliani. As a result, the exhibition was a great success. Had the mayor known that art designed to shock is old hat, few people would have heard or cared about *Sensation*.

GEORGE JOCHNOWITZ
College of Staten Island, CUNY
Staten Island, New York

TO THE EDITOR:

Bravo, Steven Munson! With the exception of his and a few articles by others, there has been a rather astonishing silence about the agendas of today's museums and the feeble offerings that pass as cutting-edge contemporary art. As Mr. Munson so accurately explains, *Sensation* was not the least bit out of the ordinary for museum fare, though the Brooklyn Museum's sideshow-style promotional hype was somewhat beyond the norm. What was truly out of the ordinary was the fact that New York's mayor was willing to challenge the museum's integrity and its right to public funding for an offensive display purporting to be important art.

I wonder how we ever arrived at the point where intelligent individuals are willing to accept sliced cows, a crucifix in urine, or a pile of old syringes as being profound expressions of the human spirit. Quentin Bell was definitely on the right track when he suggested in his book, *Bad Art*, that the current antiaesthetic is about contrived elitism rather than art. By promoting bizarre and unappealing constructs as significant creations, one can then pretend to a superior understanding of hidden meanings not available to the uninitiated masses. Until people are willing to object to this practice, we will be served up slightly modified versions of *Sensation* over and over again.

CAROLE C. QUAM
Chugiak, Alaska

STEVEN C. MUNSON writes:

I would like to thank Harvey Gordon, Arnold Flick, George Jochnowitz, and Carole C. Quam for their thoughtful and supportive comments. Such responses are indeed gratifying.

Harvey Gordon shares a view of modernism that, with some variation, can also be found in the writings of such commentators as the journalist Tom Wolfe and the historian Paul Johnson—to wit, that modern art represents a fundamental break with the artistic tradition that preceded it, a tradition rooted in the Renaissance and the classical era. This view is unsupported by the historical and biographical record, which makes it abundantly clear that Matisse, Picasso, and the other giants of modernism were fully engaged with that tradition, and considered it to be both vitally alive and crucial to their own artistic development. In responding to the tradition they inherited, they sought, in fact, to rescue it from the academic ossification into which it had fallen in the hands of its self-styled defenders. It was this process of recovery that led modern artists to create forms of painting and sculpture that, while radically new, were inspired in part by a serious appreciation and study of the past. One could even say that modernism itself was the "dynamic, embracing, updated version of traditional artistic and cultural values" that

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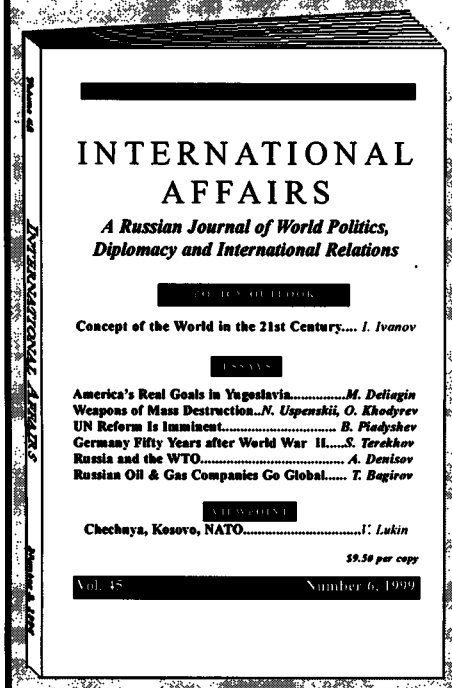

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Mr. Gordon calls for today.

By contrast, much of what goes under the name of "postmodern" is both antimodernist and antitraditionalist. For that reason, there seems to me to be greater continuity between the modern period and all that went before it than—superficial appearances and resemblances of means notwithstanding—there is between modern and much of postmodern art. Where that leaves us, beyond recognizing the need to uphold the light of modernism—both because of the great value of its own achievements and because it grants us access to artistic periods remote from our own experience—I do not know.

I also lack the courage shown by Arnold Flick in offering a definition of art, and of great art in particular. One key for me, I suppose, is how long I feel compelled to stand in front of a painting or sculpture, or how many times I want to return to look at it again. As for originality, when it is genuine, it often seems to be the result of, again, a serious effort to engage, rather than overthrow, one's artistic predecessors, an effort that frequently begins with attempts to copy or imitate their work.

I disagree with George Jochnowitz's view that, "For a century now, modernists have tried to shock the public." Shock may have been the first response to their work, but it was not their artistic goal nor was it central to their intentions. Matisse agonized over what he was doing when he began to create his Fauve pictures, and Picasso carefully calculated the possible public reaction to his Cubist works. What Mr. Jochnowitz says does, however, apply to many postmodern artists, for whom shock seems to be an end in itself. He may be right as well about Mayor Giuliani's inadvertently helping to boost the *Sensation* exhibit into the limelight and thereby save it from relative obscurity.

Carole C. Quam is also right about Giuliani's being an exception in standing up to condemn bad art. On the issue of funding, however, my own feeling is that once you decide to give public money to a cultural institution to promote art appreciation you really have to let the people in charge do their job as they see fit; otherwise, politically motivated interventions would be called for every time somebody with clout or an axe to grind happened not to like an exhibit. It might have made more sense for the mayor to use his bully pulpit to criticize *Sensation* and demand that the trustees of the Brooklyn Museum publicly explain their decision to show it, rather than going to the mattresses on funding and winding up in court. That seems to me to be the last place where we would want such matters to be addressed, since the issue then becomes one of First Amendment rights rather than what is most relevant, namely, the museum's quality-control standards.

As for the elitism of the art world, I frankly wish it were generally *more* elitist in its aesthetic attitudes these days, as unapologetically elitist, say, as is Phillippe de Montebello, the head of the Metropolitan Museum of Art. One reason exhibits like *Sensation* are put on is that, appealing as they do to the lowest common denominators in public taste, they are viewed as potential moneymakers. The overcommercialization of the museums is, in fact, the chief problem with such institutions today, and has in many ways been very detrimental to the experience of going to look at art.

Jazz

TO THE EDITOR:

According to Terry Teachout, after the rise in popularity of fusion jazz in the early 1970's, "no subsequent stylistic development has commanded comparable loyalty" ["Masterpieces of Jazz," November, December 1999; January]. He does not bother looking past this period in compiling his list of jazz masterpieces because "the musicians who have come to prominence since then have mainly been neoclassicists of one sort or another." Apparently Mr. Teachout limits his list to pieces demonstrating "stylistic developments" with "widespread popularity"—even though he also says "musical excellence" is his only criterion. The implication of all this seems to be that—as far as the public is concerned, anyway—jazz is going nowhere.

Why would that be? Because both critics and the public alike are in thrall to jazz mythology, with its clearly delineated ages, Olympian personalities, etc. The scribblings of mythographers have made jazz a nostalgic relic, a "classical" heritage-cum-folk-tradition. Jazz has made its way from shady drinking establishments to Lincoln Center, where it now wears the suit it will be buried in.

The fact is that there is plenty of creative music out there and plenty of stylistic development. Mr. Teachout seems to need a historical category and a retrospec-

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tive analysis of a popular movement in order to admit any music to his jazz canon. But "musical excellence" is enough of a standard.

COMMENTARY's readers should not ignore the past. By all means, they should take Mr. Teachout's suggestions. But they should also seek some living, breathing musicians as well. If enough of us follow our ears, maybe the jazz pundits of the future will have something new to write about.

SCOTT JOHNSON
Duluth, Minnesota

TO THE EDITOR:

Terry Teachout's series on "Masterpieces of Jazz" is awesome. Reading it reminded me of my days as an undergraduate at Penn State in the late 1950's. During the first week of classes I joined the jazz club, which booked groups for campus performances. Early in my freshman year, the Louis Armstrong All Stars—with Trummy Young, Barrett Deems, "Monk" Hall, and, of course, "Pops" himself—held an evening concert. The protocol was to honor the musicians beforehand at a tea in one of the nicer dorm common rooms. Members of the jazz club were invited along with the music faculty.

Being immature and fearless around strangers and wishing to meet the great man, I walked over to Armstrong, stuck out my hand, and introduced myself. I can remember the royal aura surrounding him. Since no one else approached, I took it upon myself to strike up a conversation. So "Mr. Armstrong," I said, "in *Downbeat Magazine* a few weeks ago Stan Kenton said that the reason he did not have Negro musicians in his band was that they could not play his style of music." Armstrong stood motionless for a minute and asked me to repeat the name. He then asked what instrument Kenton played, and where he was based. I answered that he was an arranger and pianist and that he worked on the West Coast. After a minute of thought, Armstrong responded, "I have never heard of him."

After graduation and my army days, I settled in Orange County, California, where Stan Kenton's band started in 1941 in the Rendezvous Ballroom on Balboa. I never missed his concerts. Over the years I have related my story about Armstrong to many ex-Kenton musicians, who tell me either that Kenton said what he believed or that he did, in fact, have black musicians in his band after its formative years.

My only argument with Mr. Teachout is that he does not find any of Kenton's work through 1953 worthy of inclusion in his canon. The 1951 Kenton band—with Maynard Ferguson, Art Pepper, Shelly Manne, and Bud Shank—was outstanding on "Peanut Vendor," "Artistry in Rhythm," "Eager Beaver," and "Intermission Riff." Surely some of these belong on Mr. Teachout's list of jazz masterpieces.

ROBERT COWAN
Costa Mesa, California

TO THE EDITOR:

Congratulations to Terry Teachout for his annotated list of some of the best jazz sides ever made—and for his temerity! With its inevitable omissions and admirable disregard of politically correct choices, Mr. Teachout's jazz canon may well stir up a critical hornet's nest. Nevertheless, the series features a set of solid blue-ribbon winners.

I would add brief comments about two of Mr. Teachout's selections in the first installment. Although fascinated by the music of Debussy, Ravel, and Stravinsky, Bix Beiderbecke was primarily influenced by the neglected American composer Eastwood Lane, whom he knew and whose *Adirondack Sketches* for piano he often played. As for Joe Venuti and Eddie Lang (né Salvatore Massaro), they were born not abroad, as Mr. Teachout reports, but in Philadelphia—Venuti on September 16, 1903, and Lang on October 25, 1902. Their birth certificates are on file in the city's archives.

NORMAN P. GENTIEU
Philadelphia, Pennsylvania

TERRY TEACHOUT writes:

Immediately following the excerpt from my first piece that Scott Johnson quotes in his letter, I added: "Meanwhile, virtually all the major exponents of pre-1960 jazz have died or retired, while the leading players of the 60's and early 70's are increasingly regarded as elder statesmen, making it possible to discuss their work in something like a definitive manner." *This* is why I brought my list to a close in 1977 (not 1972, as I initially announced last November—I changed my mind in midstream).

In fact, I am passionately interested in the current jazz scene, and write about it for other publications, as well as in liner notes for the albums of younger artists whom I admire. But the essence of a canon is that it embodies settled judgments, not provisional ones; it is too soon to say how jazz historians of the future will regard the musicians of the 80's and 90's, though I have my guesses.

Thanks to Robert Cowan and Norman P. Gentieu for their letters, as well as to the many readers who communicated with me privately, sometimes to point out other small errors of fact—I made a few, alas—or to ask why I chose not to include this record or that. Often it was simply a matter of taste, but the temporary unavailability on CD of certain key recordings forced me to make several last-minute changes. I had seriously considered including, for instance, Stan Kenton's wonderful 1954 recording of "Young Blood." As Clement Greenberg once remarked before announcing the winners in an art exhibition for which he had served as a juror, man is fallible. So are record companies.

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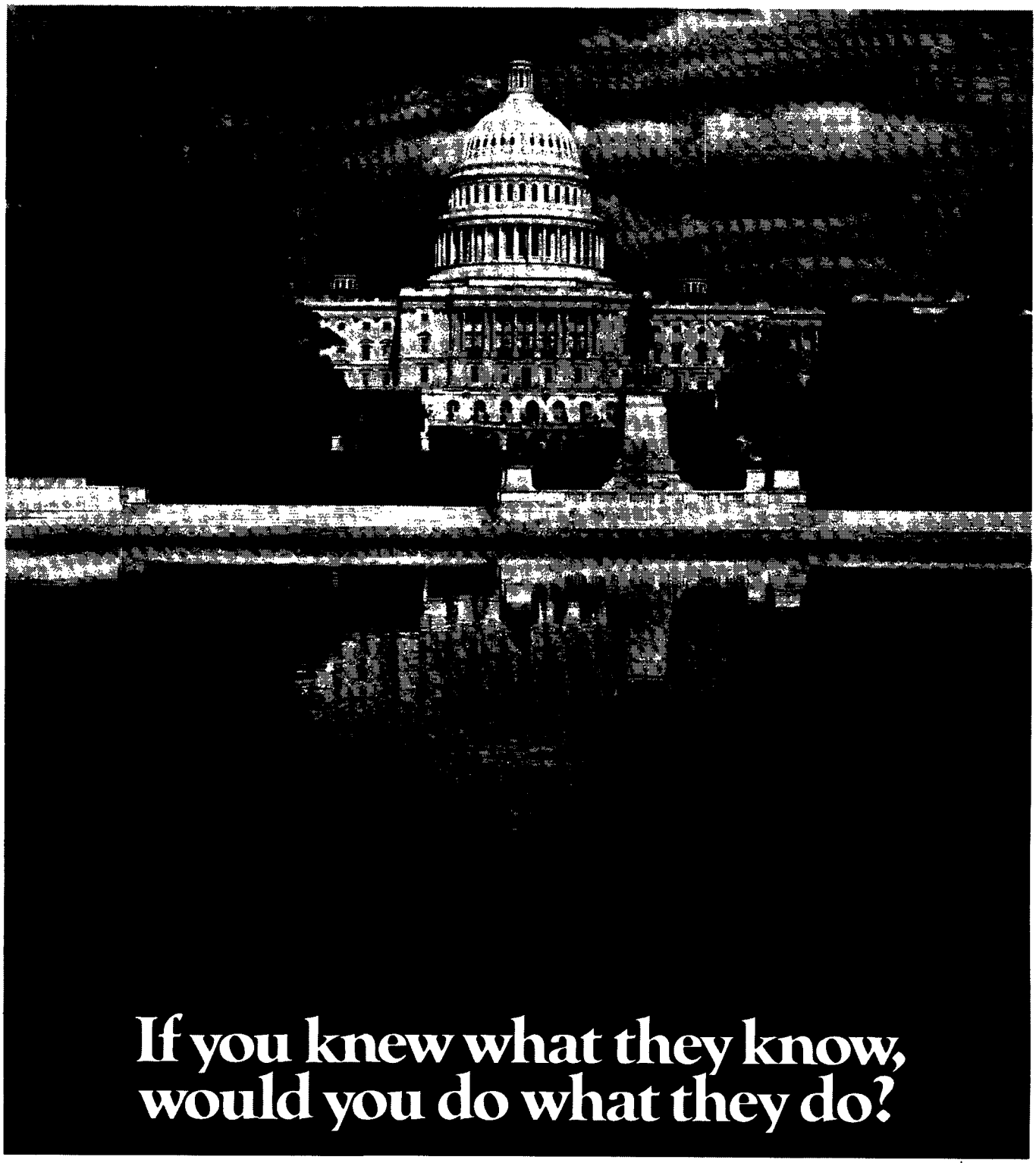

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Commentary
April 2000

Why the Era of Big Government Isn't Over

Christopher C. DeMuth

AMERICANS ARE today the richest, freest people the world has ever known. They enjoy unprecedented levels of personal health, mobility, safety, education, and amenity. Their worst foreign enemies have been vanquished, and for the time being the prospect of war appears remote. The same may be said of civil discord, as many old and often violent animosities of race, class, and economic interest are melting away. Pollsters report levels of social contentment never seen before.

Freedom and fortune in the United States are also very widely shared, making us the most egalitarian of any advanced, prosperous society. True, the distribution of income has become somewhat less equal, but income is an incomplete measure of real-life circumstances in a society where the average income is so high and where so many things that were once luxuries—good food and clothing, cars, homes, advanced communications, art, entertainment, foreign travel—have become mass-market commodities. The down-to-earth measures of material welfare like consumption, health, and longevity show a marked increase in real equality.

Many of today's most talked-about political problems—reducing pollution, relieving traffic congestion, providing better medical care to people of modest income—are hardly problems of resources at all; we possess ample means to address them. The constraints on their solution are not material but political—the capacity of our political system to mediate our inevitable differences of interest and opinion.

More important now are problems that are, in many ways, the *result* of our freedom and prosperity: the characteristic problems of a mass-upper-middle-class society. One of these is the problem of extending the knowledge, habits, and institutions of productive freedom to those who continue to live in circumstances of genuine poverty and hardship. Another is the problem of employing our good fortune properly within the wider society—learning to live in a world where wealth, freedom, and technology have amplified man's capacities for vice along with his capacities for virtue.

These two problems are now at the center of national political debate, and both raise issues that go well beyond public policy as traditionally conceived—issues of personal conduct, social norms, civic and cultural institutions, and particularly the state of the family, child-rearing, and sexual practices. Refreshingly, political discussion of these problems has become increasingly bipartisan. If conservatives were largely absent or ignored during the debates over civil rights and urban poverty in the 1960's, beginning with the publication of Charles Murray's *Losing Ground* in 1984, they have taken the lead in articulating and applying new approaches to the problem of poverty, especially in the areas of welfare and

CHRISTOPHER C. DEMUTH *is president of the American Enterprise Institute for Public Policy Research.* *A version of the present article was delivered as the Francis Boyer lecture at the Institute's annual dinner in February.*

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school reform. And if the debates over culture, marriage, and family sometimes seem to be mounted not so much by as within the Right—that is, between social conservatives and libertarians—the Left has been strongly engaged as well.

There is, however, another problem that our generally happy state has made more urgent, but that so far is receiving less attention and generating no new approaches on the part either of liberals or of most conservatives, even in this presidential season of lively intraconservative debate. It is the oldest of political problems, the problem of limited government.

II

MODERN GOVERNMENT has turned out differently from what was anticipated by libertarian thinkers like Friedrich Hayek. In his great polemic *The Road to Serfdom*, published in 1944, Hayek warned that the welfare state could metastasize into full-fledged socialism under the pressures of class envy and economic resentment and the prestige of "rational central planning." This was Hayek's road to servile citizens, stagnant economies, inert societies. But his fears now have an antique ring. Hardly anyone today admires government planning, and, at least in America, class and economic animosities have not grown but abated. The free market has triumphed in practical result and popular opinion; Hayek has won the Nobel Prize; billionaires can be folk heroes and even run for President.

Yet the state has grown prodigiously. In 1947, the first complete peacetime year after Hayek wrote, government outlays (federal, state, and local) were 21 percent of gross domestic product; in 1999, they were 31 percent. Taking into account the growth of regulation that is not captured by these statistics, government has grown more than 50-percent faster than the economy as a whole, and now claims more than one-third of America's economic resources. The federal government owns one-third of the American land mass, pays for 40 percent of medical care, manages nearly 50 percent of personal retirement savings, and regulates many major industries. State governments heavily regulate the distribution and sale of automobiles, alcoholic beverages, insurance, and other important goods and services.

That is not the whole story, of course. Even as government has been growing overall, we have reformed or repealed many policies and programs, including the regulation of transportation, energy, and finance; farm subsidies; overcontrol of pharmaceutical marketing; populist-style antitrust enforcement; and innumerable trade restrictions—all to excellent effect. Equally important, we have abstained from many harmful ventures common to other democracies, like nationalized medical care and restrictions on industrial restructuring and "downsizing." American government is still small as compared with other Western economies, and the others are less prosperous and dynamic than ours.

Nevertheless, we find ourselves with an activist government that plays a larger and more immediate role in our lives than ever before. Every American who is a taxpayer, property owner, or employee of an institution of any size is now in continuous contact with one or more agencies of government whose rules must be followed under sanction of the police power. Business executives, plant managers, personnel managers, real-estate agents, doctors, accountants, and university administrators now routinely do things under the influence of government rules or court doctrines that they would not do according to their own professional judgment.

The rules and doctrines are supposed to further some larger purpose, such as consumer protection or environmental quality, but those on the front lines often regard this claim with scorn, and they are often right. We know, for example, that doctors in states with more expansive tort liability practice "defensive medicine" that increases costs without improving quality of care; that regulation of automobile insurance raises rates and leaves more unsafe drivers on the road; and that rules issued by the Environmental Protection Agency (EPA) or the Occupational Safety and Health Administration (OSHA) often require enormous expenditures for little or no environmental or safety benefit.

Moreover, the gap between public policy and private behavior is widening. Social Security is the most conspicuous example. When the program was established in the 1930's, many Americans of modest means had few if any effective opportunities for personal saving and investment. Today, most Americans are shareholders, and the price of a ticket to a professional basketball game will get you into a superlatively managed mutual fund. Yet Social Security continues to garnish a large share of our earnings and to promise relatively miserable returns to most current workers.

III

THERE IS a standard account of why government programs survive long after they have become obsolete or been intellectually discredited. That is the theory of interest groups: well-organized groups with large stakes in a policy, like an

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industry or an occupational or recreational group receiving a subsidy, constantly outmaneuver diffuse groups with small individual stakes, such as taxpayers who contribute pennies apiece to finance the subsidy. It is a powerful theory with a distinguished academic pedigree, and it lately received renewed impetus in the spirited presidential campaign of Senator John McCain. But the critical question is this: as the growth of private markets, affluence, and technology erode the formal reasons for many government programs, might they not also erode the practical political forces that maintain those same programs?

There are several reasons for thinking this might be the case. Globalization—the increased mobility of capital, goods, and services across political boundaries—has weakened the effective power of individual governments to tax and regulate; that is what the labor unions, the Seattle rioters, and Governor Mike Leavitt of Utah—who wants to tax sales on the Internet—are worried about. The increased pace of technological change can leave lumbering government in the dust: the federal government has been trying in vain to regulate the computer industry since the 1970's, and although it may lasso an individual firm like Microsoft, it has no hope of corralling the entire industry as it did trucking and railroads in an earlier age.* The sheer growth of market opportunities increases the gap in performance between government and the private sector. This appears to have been an important factor in the erosion of political support for regulation of energy and the airlines, and seems to be at work today in the movement for Social-Security reform.

There is, however, another side to the coin. Governments may react to globalization not by becoming leaner and more focused, but by joining forces. The European Union's efforts to harmonize taxing and spending among European nations; "side-agreements" on environmental and labor standards that accompany trade compacts like NAFTA; proposed U.S. legislation to empower the states to tax Internet sales—all these are examples of governments forming policy cartels to maintain their power.

Consider also the political implications of specialization (which, as Adam Smith taught in the first chapter of *The Wealth of Nations*, is both the cause and the consequence of economic advance). In a society as advanced and complex as ours, most of us, however well-informed about one special niche of the big wide world, are poorly informed about the rest of it. We may know a great deal about bankruptcy law or automobile repair or interior design, but little about bioengineered foods, global warming, or the administration of health insurance. And this means, as compared with times past, that we judge a larger number of political questions not according to our own practical knowledge of the world but according to abstract, second-hand accounts, many of them from self-interested parties and political entrepreneurs. Those accounts, being addressed to a public that knows few of the facts at hand, tend to be simple dramatizations focusing exclusively on a wrong that needs righting, without mentioning the inevitable costs and trade-offs that would be obvious to anyone with direct knowledge.

Most importantly, better technology and more efficient markets are things that government, and those who seek its favors, can make use of themselves. The communications revolution has made it possible to mount litigation, legislation, and publicity campaigns with a degree of thoroughness and coordination never before possible. Arresting research by the economists Gary Becker and Casey Mulligan suggests that a key factor in the postwar growth of government has been the increased efficiency of taxation, which permits the redistribution of higher benefits to particular beneficiaries at lower cost to taxpayers. Just as in private markets, when the cost of something falls, the amount demanded and consumed increases.

IV

INDEED, THERE is good cause to worry that government is mastering the techniques of efficiency and growth inherent in the "new economy." This problem has, moreover, assumed constitutional dimensions, because the executive branch, which the Constitution leaves largely undefined, is much more free to innovate than the legislative branch, with its many built-in inefficiencies like bicameralism and decision-making by committee and voting. The age of superaffluence and high technology may, paradoxically, be one in which the traditional architecture of limited government is newly at risk.

Here are a few vignettes from what might be called the new executive state:

- As long ago as the early 1980's it was shown (by R. Shep Melnick) that the Clean Air Act, one of our most complex federal statutes, had essentially been written by the EPA, the courts, and environmental groups. The role of Congress had been reduced to ratifying the sit-

* See, on this point, Peter W. Huber's "monopoly.com" on page 36 of this issue—ED.

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uation on the ground every few years and adding a few statutory tweaks when administrative developments departed too far from legislative sentiments.

In the intervening years, the dynamic has progressed much further. Today, the EPA has gathered the authority to write and enforce rules costing many billions of dollars simply on a showing that some, even relatively trivial, health benefit will result. Its new ozone standard, currently on appeal, would cost on the order of $100 billion a year if fully implemented. In return, it would provide public health benefits of about zero.

• Agencies increasingly govern by informal guidance and one-on-one negotiations with grantees and regulatees—a practice that received rare publicity when OSHA recently attempted to apply its workplace regulations to telecommuters' homes. One well-developed technique is to establish a standard that is generally infeasible (like the EPA's ozone rule, which would obviously never be enforced as written), thereby compelling firms and localities to seek waivers—to which strings may be attached.

Through these and other means, "virtual regulation"—rules of uncertain provenance, known only to those immediately affected—is becoming as important as formal, on-the-record regulation. College athletics directors know that they must aim for equal expenditures and participation in men's and women's sports, and if necessary abolish some men's sports to do so, but you will not find this policy in Title IX of the Education Amendments Act of 1972 or in the Department of Education's regulations under the act, and if you ask the department's officials whether such a policy in fact exists, they will tell you it is nothing but a silly rumor and they just want to be helpful partners with the nation's athletics directors. Similarly, business executives needing the approval of the Federal Communications Commission (FCC) or the Surface Transportation Board for a merger or other major transaction know that they will be presented with an expensive to-do list having little or no relevance to the economic merits of the transaction but which they must accept as "voluntary" conditions of approval.

• The executive branch is learning unilateral taxing and spending, thereby loosening the linchpin of legislative power. The FCC's universal service program, which it established by regulation a few years ago, now produces annual revenues of more than $5 billion from a tax on long-distance telephone service; these revenues are spent on computers for schools and libraries and other projects. The commission itself sets the tax rate (currently 5.9 percent—twice the *statutory* tax on the same service) and adjusts it as often as quarterly to keep revenue in line with its spending plans. That is a breathtaking degree of financing power, one that neither the Ways and Means Committee nor Goldman Sachs could match. When the telephone companies announced plans to itemize the tax on their long-distance bills, the FCC chairman told them it would be better if they didn't.

• The latest innovation in executive taxation, pioneered by the states, is "recoupment litigation," wherein the government selects a group of citizens who are to pay a portion of government expenditures under threat of liability suit. The suits, financed by hiring private lawyers who work for a percentage of the proceeds, seek not only payments for government programs but changes in private business practices (more "informal regulation"). The state litigation against cigarette and gun manufacturers, the federal government's tobacco suit and planned gun suit, and Rhode Island's suit against manufacturers of lead-based paint are the advanced prow of this development.

As a legal matter, these cases are travesties. The government already collects more in tobacco taxes than it pays in smoking-related medical expenses; Secretary of Housing and Urban Development Andrew Cuomo, in threatening the gun suit, made it clear that his real interest was not legal vindication but rather that the manufacturers agree to contribute to the $1-billion annual expenses of housing-project security and to change the design and marketing of firearms. The cases' circumvention of democratic process has been condemned by both the conservative Robert Bork and the liberal Robert Reich. Nevertheless, the state tobacco suits, which were entirely bipartisan, have been a huge financial success, raising $240 billion. That guarantees continued probing and legal innovation in successive categories of government expenditure and nonstatutory regulatory schemes.

• The growth of international law and organizations is opening still more and broader avenues for unencumbered executive lawmaking. Last fall, following the Senate's rejection of the Comprehensive Test Ban Treaty, administration officials said the United States would abide by the treaty anyway (that is, continue to

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abstain from testing nuclear weapons). That is the President's prerogative as commander-in-chief. But officials went beyond this, suggesting that we were *legally obliged* to adhere to the treaty despite the Senate's action.

The source of this alleged obligation is another treaty, the Vienna Convention, governing interim compliance with treaties that have been negotiated but not ratified—a convention that many nations ratified but the United States did not, precisely because it would have compromised the Senate's treaty powers! Using an unratified treaty as legal grounds for complying with a rejected treaty was a subtle step forward for the new theory of "customary international law" now a-building in law journals and at the United Nations, according to which governments and citizens have the legal duty to follow prevailing international practices regardless of what their own political institutions have decided.

• A separate problem is presented by the Kyoto Protocol, the agreement placing sharp restrictions on greenhouse gas emissions that the Clinton administration negotiated but has said it will not submit to the Senate in its current form. The administration's efforts to begin enforcing the protocol by regulation, and Congress's efforts to prevent enforcement pending Senate action, have obscured a more fundamental difficulty. If the protocol, or anything like it, *were* ratified, it would commit the United States to costly environmental efforts under the continuing supervision of one or more international bodies. Compliance would presumably be subject to our domestic legislative and regulatory procedures—that is, to our constitutional form—but, once again, the executive would have the upper hand in developing policy and presenting the Congress with political faits accomplis.

V

IN THEORY, Congress could revise or reverse any or all of the developments I have described, either by statute or by exercising its power of the purse. Executive agencies always operate under the terms of some more-or-less relevant statute, and Congress is continuously engaged in oversight and statutory adjustment. Most of the policies in question are also subject to judicial review. The important point, however, is that the dynamic of executive growth undercuts the constitutional checks and balances, and even enlists Congress and the courts in the cause.

First, Congress has accommodated political pressures for new spending and regulation by delegating some of its law-making power to the executive, which has essentially unlimited ability to take on additional projects.

Second, these delegated legislative functions include, in practice, not just the formal one of decision-making but also the political ones of representation, deliberation, and coalition-building. The agencies and those they fund and supervise are indeed "partners," just as the Education Department says; their relations may not be chummy—often they are antagonistic—but they are long-term and "codependent." Everyone involved has strong incentives to work things out, keep quarrels out of court, and present a united front to Congress when statutory ratification is in order.

Third, executive programs are not subject to the same pressures for compromise and moderation that they would face in the legislature, such as competition for appropriations. Each agency is able to pursue its goals constrained only by the divergence of interests within its coalition, and not by the larger and far more divergent interests of those on the outside. In this manner, the mechanisms of government come to promote, rather than discipline, what Thomas Sowell calls "the quest for cosmic justice"—the idea that every conceivable social improvement ought to be pursued regardless of cost. And that maintains political pressure for yet more programs and agencies.

This dynamic is different from the customary political competition between Congress and the President, where the advantage seesaws between the one (as during the Watergate era) and the other (as during Ronald Reagan's first term). The growth of administrative government diminishes the political prerogatives—and therefore the democratic-representational functions—of both the President *and* Congress. Both are progressively more constrained by the actions of individual agencies working in concert with the private members of their coalitions, with recourse as needed to courts (and especially juries) to provide legal legitimacy while diffusing political accountability.

Still, it is on the legislature that the effects I have described are the greater by far. In 1996, in an effort to reassert its authority over administrative law-making, Congress passed the Congressional Review Act, providing special procedures for statutory disapproval of specific agency actions. The act was considered a triumph on Capitol Hill, and, given the sharp partisan division between Congress and President Clinton, the incentives for its use were particularly strong. But it has been a nullity.

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In the years since the act's passage, the executive branch has issued over 15,000 regulations. A total of eight resolutions of disapproval have been introduced; none has passed either chamber.

We all know that our constitutional structure needs some play in the joints in order to stand and endure; but that is precisely what is under threat by the form our government is taking. One set of potentially serious consequences, even in a nation as rich as ours, is economic. Unchecked administrative government tends to produce quiet accommodations and abuses whose cumulative costs are revealed only when an external shock brings the whole game to a disastrous end. That was the lesson of the U.S. savings-and-loan debacle in the 1980's, just as it was, mutatis mutandis, of the Asian financial collapse of 1998. In the meantime, the economy becomes poorer and less dynamic, and politics becomes more regimented and less democratic.

The more immediate consequence is popular disillusionment with government and politics. We all expect and even enjoy a certain amount of bombast from our politicians, but it is a very bad thing when public policy and private practice diverge as much as they do in the United States today. Americans have not become Hayek's serfs: although we must propitiate many bureaucratic fiefdoms, and are generally compliant, we are the opposite of servile. Our regard for government—never very high—has fallen to its lowest level in polling memory.

The American era of big government began with Theodore Roosevelt and Woodrow Wilson, each with his own forthright, popularly compelling vision of active government hitched to a common national purpose. It continued with Franklin Roosevelt, who had a big problem on his hands and popular support to try almost anything to fix it. But much of government today has no theme or theory, just momentum. It is government sprawl, strip-mall socialism—ubiquitous, undistinguished, strictly utilitarian in the service of innumerable small middle-class wants and gripes. Bill Clinton did not invent the technique of expanding government by tiny meliorative increments; he learned it from the world he inhabits. The government invented it itself.

VI

WHAT, THEN, is to be done? One important remedy can be found in the principle of competition. At every point on the political spectrum, Americans are individualistic, prochoice, and antimonopoly: they favor a wide scope for individual preference and know that competition, even tough and unruly competition, promotes not only choice on the demand side but quality, discipline, and integrity on the supply side. Those hardy sentiments are already the building blocks for school and welfare reform, grounded in the demonopolization of government services and the reinvigoration of diverse community institutions. Competition is also powerfully at work in the battles over cultural standards and institutions, battles that are resulting in a profusion of new magazines, museums, think tanks, and academic, artistic, and professional societies.

Competition should also be the animating principle of those who would devote themselves to the task of relimiting government. Political competition was Madison's "auxiliary precaution," standing behind the Constitution's "parchment barriers" to the growth of government. The forms of competition Madison envisioned have become less effective—his "extended republic" of divergent regional interests is no more. But other forms have grown, and can be similarly employed once the essential strategy is grasped.

One thing that has already constrained or reformed many domestic policies is the growth of interstate and international markets—just ask the Food and Drug Administration officials who are trying to prevent Americans from using the Internet to learn about foreign pharmaceuticals. Globalization must be permitted to continue its work, unfettered by diplomatic schemes to "rationalize" divergent national policies. Trade-liberalization programs themselves need to be treated with a new skepticism, presenting as they now do the potential for hitching economic interests not to free commerce but to unfree policy. Forthcoming research by the economist Jagdish Bhagwati and his colleagues suggests that the growth of global markets is producing effective political coalitions for freer trade within nations, thereby reducing the need for tit-for-tat trade liberalization treaties like NAFTA and the WTO. For example, recent actions to dismantle trade and investment barriers in Chile and elsewhere in Latin America, in South Korea and elsewhere in Asia, and even in China have been taken on the basis of unilateral national interest, not as part of international agreements. All the more reason to resist new agreements that would condition the opening of trade on the closing of democratic choice in individual nations.

Within the United States, the resurrection of federalist doctrines in the courts could open the way for a Madisonian revival. The trick here is to understand that the purpose of modern federalism is not just to empower states—which are already the source of some of our most egregious poli-

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cies—but to see that public policy is provided under circumstances of greater competition.

The single most productive body of U.S. regulatory law is corporation law, and this, as Roberta Romano of the Yale Law School has demonstrated, is in large part because corporations are free to choose their state of incorporation. The Romano principle is rich in possibility. If, for example, it proves impossible to keep Internet sales tax-free, then state sales taxes should apply to sellers rather than customers. Thus, Washington state would be free to tax all the sales of Amazon.com as well as those of local bookstores—but Amazon would be free to relocate to another state with a lower tax.

Competition also holds great promise for reforming liability law. Sellers of automobiles, medical care, hot coffee, and other things involving consumer risk could be permitted to contract out of liability for the big-ticket items of tort law—pain-and-suffering and punitive damages—provided only that they remained liable for the tangible costs of accidents, like medical expenses and lost wages. That way, we would see head-to-head competition among sellers with more and less extensive liability, and find out if the lawyers are right that the current tort system is well worth its costs to consumers. The current debate over removing the liability exemption of health-maintenance organizations provides an excellent opportunity here. By all means make HMO's subject to liability in the event of medical accidents or bad outcomes—so long as they are also free to specify the extent of that liability in their insurance contracts, along with numerous other provisions affecting the quality and cost of competing health-care plans.

VII

REFORMS SUCH as these will require innovations in political rhetoric and leadership, especially at the presidential level. Rhetoric can be a powerful tool for limited government, as Ronald Reagan demonstrated with his skillful use of tax-reduction to promote a smaller government (to "reduce the government's allowance," as he put it) as well as a bigger economy. Such was the success of Reagan's strategy that it acquired an almost mythical prestige, and has continued to be employed by Republicans in today's much more prosperous age when it has outlived its political utility. The times call for new rhetorical strategies and more particular and gritty approaches to government reform.

Markets, choice, and competitive federalism can provide some of the tools. But the problem of unbounded administrative government will also require that our presidents be much more constitutionally assertive. The President is, among other things, one of the three coequal branches of the federal government. He is as entitled as the Supreme Court to take positions on what is and is not constitutional, and to direct his subordinates to act, and to abstain from acting, in accordance with those positions. Today, executive-branch innovations like those I have described often go unchallenged on constitutional or other legal grounds; and, when they are challenged, executive-agency lawyers reflexively defend them with all the resources of litigation and case-by-case compromise at their disposal. The President could begin to reverse this process by ordering executive officials not to enforce statutes he regarded as unconstitutional, and not to interpret vague or ambiguous statutes (like those on which the FCC's tax program and the EPA's air-quality standards are based) in ways that encroach on congressional responsibilities.

Such steps would be highly controversial among many academic and practicing lawyers, among executive-branch officials who are always keen to keep Congress out of their hair, and in Congress itself. The controversies, if chosen with care and advanced in a principled way, would be invigorating and productive.

VIII

I HAVE noted that, despite the growth of government, Americans have not become Hayek's serfs. But some social critics believe we have become something almost as bad—the people portrayed in a famous, gloomy passage in Tocqueville's *Democracy in America* and, at a high-tech level, in Aldous Huxley's *Brave New World*. These are people who have become, as Tocqueville put it, childlike, self-absorbed, and politically anesthetized by "petty and banal pleasures" under the ministrations of a government that "gladly works for their happiness but wants to be the sole agent and judge of it."

But that is not quite right, either. Americans are a pleasure-loving people, to be sure, and with abundant sources of gratification. But we are also skeptical, self-reliant and at times fiercely individualistic, ethically serious and at times highly moralistic, and possessed of a strong patriotism attached to a "way of life" rather than to government. These singular and enduring attributes of the American character, which are the ultimate sources of the freedom and prosperity we are enjoying today, are needed more than ever if we are to confront and transcend the steady encroachments of the new executive state.

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Haider and His Critics

Robert S. Wistrich

PARLIAMENTARY ELECTIONS in Austria are seldom the stuff of international headlines, but something extraordinary happened when Austrians went to the polls last October: the radical right-wing Freedom party, led by the youthful and telegenic Jörg Haider, won an unprecedented 27 percent of the vote, making it the country's second most popular party behind the long-dominant Socialists. By February, the Freedom party had actually ascended to power, forming a coalition with the conservative People's party, the third-place finisher in the election. Having declared that he would continue to serve as governor of the province of Carinthia, Haider himself declined to take a position in the new government, but his followers soon occupied half the seats in the cabinet—a development that prompted an unexpectedly swift and severe international backlash.

Citing the Freedom party's long history of xenophobia and sympathy for Nazism, the European Union (EU), of which democratic Austria is a member, immediately imposed diplomatic sanctions, including a virtual boycott of the country's ambassadors, a refusal to meet bilaterally with its ministers and senior officials, and a major scaling-back of cultural exchanges. France and Belgium—with support from Italy, Spain, and Portugal—endorsed even more radical measures, going so far as to hint at Austria's eventual expulsion from the EU. Europe, one Belgian minister declared, must not become "infected by the gangrene of the extreme Right." For its part, Israel recalled indefinitely its ambassador to Vienna, with Prime Minister Ehud Barak intoning that it was "impossible to accept that at the beginning of the 21st century a government can include a man with . . . the almost neo-Nazi opinions of Haider."

In Austria itself, the reaction to this storm of protest varied widely. Many Austrians openly sympathized with the EU's effort to isolate the new government, and tens of thousands descended into the streets to demonstrate against Haider and the "racist" coalition. Others expressed alarm at the damage that had been done to their country's international reputation and, potentially, to its lucrative tourist industry. Still others responded with predictable defensiveness to what they saw as unwarranted interference in Austria's internal affairs. By the end of February, Haider himself, in what appeared to be a capitulation to international pressure, resigned as head of the Freedom party—though not, pointedly, from politics altogether.

That the rise of Jörg Haider and the Freedom party has stirred such passions should come as no surprise. Austria may not figure prominently on the world stage, but recent events there have an

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unmistakable historical and political resonance. At issue, however, is not simply the matter of how to treat the Nazi past or the alleged recrudescence in Europe of Nazi-style politics. The deeper question raised by the Haider affair—and one unlikely to disappear anytime soon—has to do with the prospects for a united Europe, a project whose most determined advocates, even at this late date, remain dangerously indifferent to the national sensibilities that still prevail on the continent and to the basic requirements of democratic self-governance.

AT THE center of the controversy surrounding Jörg Haider is, of course, his oft-voiced affinity for certain aspects of the Third Reich. Born in 1950 to a father and mother who were active National Socialists in Austria even before Hitler's rise to power in Germany, Haider has always stressed the happiness of his childhood and his respect for his parents and their entire generation—a generation many of whose members cheered the Nazi *Anschluss* with Austria in 1938 and overwhelmingly ratified it in a notorious plebiscite (conducted, to be sure, after the fact and under the gaze of the occupying Nazis).

Haider himself is a direct beneficiary of this dark chapter in Austria's history, a period during which a third of the country's prewar Jewish population was murdered and the other two-thirds forced to flee. His personal fortune stems from a family inheritance that was gained by the coerced sale of Jewish property. The 38,000-acre forested estate that he currently owns—the "Valley of the Bears" in Carinthia—belonged to an Italian-Jewish timber merchant whose widow in 1940 surrendered it to one of Haider's relatives, a local Nazi official, for a fraction of its true value, now estimated at some $18 million.

The influence of this family background has been evident from the outset of Haider's political career in 1979, when he was first elected to parliament as a Freedom-party deputy. He has long maintained that those Austrians (and Germans) who fought dutifully in the Wehrmacht deserve every token of honor and respect. "Our soldiers were not criminals," he has repeatedly said; "rather, they were victims." Haider has also shown a penchant for addressing veterans of the Waffen-SS—the blackshirted units specially sworn to Hitler's service—and praising their character. They, too, he has insisted, were "decent fellows."

More controversial—and, on occasion, damaging to Haider's career—have been statements suggesting a broader sympathy for the Nazi cause. Concentration camps, he has remarked, were essentially "punishment camps" for civilians. He has publicly praised the "orderly" employment policies of the Third Reich. And when asked by a television interviewer about war criminals of the 20th century, he omitted Hitler—but managed to assert that Churchill was worse than Stalin.

Though Haider himself has avoided explicitly anti-Semitic remarks in public, he and his party have consistently opposed efforts aimed at encouraging Austrians to come to terms with their country's considerable role in the Holocaust. Indeed, despite the prominence of many individual Austrians in carrying out the "Final Solution"—from Hitler himself to Adolf Eichmann and Franz Stangl, the commandant of Treblinka—as well as reliable estimates that Austrians composed as much as 40 percent of those most intensively involved in the Nazi genocide, the Freedom party has tended to promote a soft form of Holocaust denial. In the party press in particular, the Nazis' crimes against the Jews have often been questioned, trivialized, or whitewashed.

Nor have Haider and his followers hesitated to appropriate certain aspects of Nazi ideology. During the 1980's, for instance, Haider was fond of observing that, as an independent entity, Austria was an "ideological monstrosity"—that is, it had no reality except as an integral part of the German people. Even now, Freedom-party literature speaks openly of the dangers of an "ethnic transformation" of Austria, invoking the country's need to preserve its *Lebensraum* (living space) and its *völkisch* character in vocabulary drawn directly from the lexicon of the Third Reich.

Of late—and for obvious reasons—Haider has made an effort to distance himself from Nazi-era military veterans, to explain away his previous statements of admiration for National Socialism, and even to apologize explicitly for any offense that his views may have caused. This effort at self-rehabilitation has included not only an admission that the Third Reich was a "cruel" dictatorship but also a much-vaunted visit to the Holocaust Memorial Museum in Washington, D.C. Moreover, upon joining the new coalition government, he pledged that Austria would undertake a "self-critical scrutiny of the National Socialist past," and he formally acknowledged the "uniqueness" of the Holocaust.

None of these acts of contrition has been accepted, or reciprocated, by Haider's critics in Austria and Europe. And perhaps with reason; for even while seeking to refashion himself as a mainstream politician, Haider has been unable to hide his distaste for any honest appraisal of the Nazi past.

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Within days of signing the coalition accord in which he seemingly repudiated many of his past positions, he was equating the Czechs' postwar expulsion of Sudeten Germans with Nazi persecution of the Jews. A truly "patriotic" Austrian government, he declared, would compensate these elderly Germans just it has compensated the victims of the Holocaust.

THESE SENTIMENTS cannot be fully understood without reference to the circumstances attending the history of the Freedom party—a movement that hardly came out of nowhere—or to its relations with the Austrian political establishment. Indeed, any attempt to place the Haider phenomenon in context must come to grips with the paradox that the success of this party has depended in large part on the cooperation and encouragement of Austria's ostensibly more enlightened sectors.

Established officially in 1956, the Freedom party was the heir to a postwar pressure group called the League of Independents, which had sought to represent those Austrians who fell outside both the socialist and the clerical-conservative camps. Many of these voters were former members of the Nazi party who had been amnestied after the war and were seeking to protect their interests. During the 1950's and 60's, both the organized Left and the organized Right actively courted the Freedom party, realizing that its support might easily turn an election.

One facet of this opportunism was that successive Austrian governments, regardless of political bent, were notably soft on de-Nazification. While working to establish pension rights for ex-Nazi civil servants, for example, they at the same time discouraged the return of Jews who had been forced to flee Austria before the war, and erected countless obstacles to the compensation of Holocaust survivors.

For all its influence, however, the Freedom party remained a marginal presence in Austrian politics until it was given instant respectability by, of all people, Bruno Kreisky, the country's first Socialist chancellor—and a Jew. In 1970, Kreisky succeeded in breaking the hold of Austria's conservatives, who had dominated every coalition government since the end of the war. For the next thirteen years, Kreisky would reign as a kind of uncrowned Austrian emperor, establishing the preeminence of the Socialist party on a scale heretofore unseen in any western democracy.

At the same time, Kreisky wanted to be, as he declared, "chancellor of all the Austrians." What this meant, unfortunately, was a determination on his part to bury the file on the Nazi era once and for all. Like earlier Socialist leaders, Kreisky angled for the support of the Freedom party, but he also went a good deal farther, signaling that the party's leaders were fit for participation in a governing coalition. His first cabinet included no fewer than four ex-Nazis.

Controversial as this was at the time, tensions over Kreisky's willingness to embrace former Nazis reached a boiling point five year later, with the Socialist party's spectacular victory in the 1975 election. Kreisky had let it be known that he had no objections to an alliance with the Freedom party and its leader, Friedrich Peter—a position to which he adhered even after the Austrian Nazi-hunter Simon Wiesenthal revealed that Peter had been a tank commander in World War II, serving in an SS unit responsible for the murder of more than 10,000 innocents, including many Jews. Although Kreisky no longer required the Freedom party's support to rule, he went out of his way to defend Peter and to denounce Wiesenthal for his "mafia" methods.

As this episode suggests, Kreisky's enthusiastic association with the Freedom party was a matter of political expedience; but it also went much deeper. Austria's Socialists, like the country's conservative People's party—which in the mid-1980's indignantly defended its candidate for the Austrian presidency, Kurt Waldheim, despite damning revelations about his own Nazi past—have only recently shown any interest in revisiting the history of Austria's role in the Nazi regime. Indeed, the survival—and now the success—of the Freedom party would be unthinkable if the entire Austrian political establishment had not been so consistent during most of the postwar period in proclaiming the country's lamb-like innocence of any wrongdoing in connection with the Third Reich.

STILL, IT would be a mistake to focus solely on Jörg Haider's attitudes to the past in explaining the rise and success of the Freedom party. The chief source of his appeal undoubtedly lies not here but rather in his ability to present himself as a genuine populist, a champion of political and economic reform. As Haider would have it, he is an enemy of the "system," a spokesman for the "little man" against a status quo created by the two main political parties, both of which have seen their support decline in recent years in the face of widespread disillusionment and boredom.

In particular, Haider has been relentless in exposing the corrupt carve-up of power and patronage under the system of *Proporz*—or proportional-

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ity—that Austria's ruling class has administered since 1945. Under this arrangement, as Haider persuasively argues, the bureaucrats of the Socialist party and the oligarchs of the People's party—the Reds and the Blacks, as they are known—have divided among themselves and their loyalists both the state bureaucracy and the heavily nationalized private sector. Popular resentment after decades of Red-Black misrule is perhaps the most powerful factor propelling Haider and his party.

Haider's presentation of himself as an energetic modernizer—on the model of Great Britain's Tony Blair—has made him especially attractive to young Austrians of every class, including well-educated yuppies who feel constrained by Austria's overregulated economy and wish to follow the path of Anglo-American capitalism. (In a February 22 article in the London *Daily Telegraph*, Haider drew parallels between the Freedom party and Britain's New Labor in the areas of employment, education, the family, health, immigration, and law and order. Though the analogies were instantly dismissed as risible by Downing Street, they contain an undeniable grain of truth.) Attracted by Haider's smooth, sporty manner and his pop-star looks—and seemingly not put off by the authoritarian cult of personality that surrounds him within the Freedom party—these young Austrians see him as a much-needed force for dynamism and change.

Of course, that is not all there is to it. Like many an effective rabble-rouser in modern times, Haider has shrewdly combined a program of sensible reform with a rhetoric of ethnocentric nationalism. Much of his success has been built on an appeal to "Austria for the Austrians," directed against the foreigners who already amount to a tenth of the country's total population (a higher percentage than for any other EU country, with the possible exception of tiny Luxembourg). Facts to the contrary notwithstanding, Haider has accused immigrants of social "parasitism"—declaring them a source of crime, housing problems, and abuse of the welfare system—and has painted nightmare scenarios of future cultural conflict unless Austria closes its borders to newcomers. He has also skillfully exploited the planned extension of the EU to include four nations that share a border with Austria—Hungary, the Czech Republic, Slovakia, and Slovenia—by raising the specter of an uncontrolled influx of cheap foreign labor.

When one adds to these concerns a general fear of "globalization" among Austria's less educated workers, it is little wonder that Haider has made such inroads among constituencies formerly loyal to the Socialists, whose decades of uninterrupted rule have made them less responsive to the concerns of ordinary Austrians. In the most recent election, almost half of the country's blue-collar voters opted for the Freedom party.

The most remarkable thing about this burst of support for Haider and his agenda is that it has come about in the midst of great political stability and a thriving economy. Unlike the Austria of the 1930's, today's Austria is not bounded by Hitler's Germany and fascist Italy. There is no atmosphere of civil war, no yawning gulf between the bourgeoisie and the proletariat, no hyperinflation or mass unemployment, no yearnings for a lost empire or dreams of *Anschluss* with a greater Germany—in short, none of the conditions that political scientists have taught us are the warning signs of fascism. Jörg Haider is the product of peacetime prosperity and a tranquil welfare state, of a society that has never had it so good—and of the peculiar set of insecurities to which such societies are prey.

THAT BRINGS us to the unprecedented and widespread alarm that his meteoric career has generated.

In part, what the success of Austria's Freedom party portends is the looming contest between the respectable and the radical Right throughout Europe. For decades, Europe's mainstream Right—the Gaullists in France, the Conservatives in Britain, the Christian Democrats in West Germany and Italy—successfully absorbed and contained the forces of right-wing extremism, sometimes in the teeth of barely disguised efforts by the Left to encourage the rise of such movements for its own electoral advantage. But Europe's conservative parties are today in crisis—out of power and either rocked by financial scandal, especially in Germany, or politically divided as in France and Italy (where the Christian Democrats were almost wiped out by corruption), or almost terminally impotent as in Great Britain. Not only that, but more generally they are out of touch with their electorates.

On traditional issues like defense, law and order, and fiscal policy, today's mainstream conservatives have lost ground to newly moderate—or newly conservatized—socialists. And simultaneously they have found themselves threatened by the ability of the populist Right to mobilize opinion around growing anxieties over national identity—anxieties whose sources include immigration, the global economy, and the increasingly ambitious officialdom of the European Union.

But, that is only one piece of the puzzle. For if

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Europe's conservative parties have so far been at a loss to present a positive political alternative to right-wing extremism, Europe's socialist or social-democratic parties and governments have added fuel to the fire by reacting to such movements, and in particular to Haider, in ways that range from the merely cynical to the breathtakingly hypocritical.

Although one would never know it from the self-righteous condemnations of events in Austria, that country is hardly alone in harboring a Haider. Indeed, in responding as vociferously as they did to the success of the Freedom party, the governments of the EU were also surreptitiously acknowledging other, no less festering dangers within their own countries: the rise of a xenophobic and separatist Flemish movement in Belgium; the 36 percent of Germans who in opinion surveys say they agree either "totally" or "in many respects" with Haider's policies, including a complete ban on immigration; the antiforeigner and virulently Europhobic Danish People's party; and so forth. No more than the respectable Right has the respectable Left been able to contain these forces. Instead, it has tried through various clumsy and self-defeating ways to coopt and even to mimic them.

Thus, even as the EU categorically denounces Haider's anti-immigration agenda, its own member nations—and especially the richer ones—have been competing with each other to keep out nonwhite immigrants from the developing world. Indeed, rarely has there been so much heated public debate in Europe over so-called "bogus asylum-seekers" and the burden that unwelcome foreigners place on economies and welfare systems. Haider's recommendations may be extreme, but in recent years a clampdown on the entry of refugees, guest workers, and clandestine migrants has become the norm in "Fortress Europe."

In Denmark, for example, once considered one of the EU's most tolerant countries, the socialist government has been implementing draconian restrictions on immigrants, asylum-seekers, and refugees—without, naturally, evoking the slightest hint of European sanctions. This form of Haiderism without Haider, and at the official governmental level, has led in Denmark to the highest rate of unemployment among foreigners anywhere in Europe—deriving not from the alleged "parasitism" of immigrants on the welfare state but from massive job discrimination against people with non-Nordic names. Meanwhile, the Social-Democratic premier has assured his people that there will be no multicultural society in Denmark at any time in the future, nor will they be made to feel like strangers in their own home. In the light of such facts, the notion that Austria—which, to take one notable instance, accepted close to 100,000 refugees after the Bosnian war—is more xenophobic than other European states begins to look laughable.

The hypocrisy of Haider's accusers has been evident in other ways as well. To step outside Europe for a moment, it is far from clear why the state of Israel should have singled out Jörg Haider—a politician who has not yet been shown to have voiced anti-Semitic or anti-Zionist sentiments—for his "almost neo-Nazi opinions" even as it turns a blind eye to the torrent of vitriol against the Jewish people that is the regular fare of the Arab world, including not only such sworn enemies as Syria and the PLO (by whom Israelis are daily slandered as the true "Nazis") but Jordan, the Gulf states, and especially Egypt. And as for Europe, one wonders why similar protestations in the name of political morality and the democratic ethos were never lodged against those Communists—active sympathizers of a brutal and murderous Soviet regime—who, in recent memory, have helped to form governments in France and Italy or, for that matter, against the inclusion in Silvio Berlusconi's 1994 government in Italy of the National Alliance, which could claim lineal descent from Mussolini's Fascist party (although admittedly the current allies of the out-of-power Berlusconi, from the Northern League, are much worse).

But Austria, it seems, has the misfortune of presenting a politically correct target—as well as a convenient deflection from uncomfortable realities at home.

AS DESTRUCTIVE as the European attitude is of simple honesty, it is no less false to the elementary requirements of democratic governance. The fact is that the Freedom party, however distressing its history and platform, has observed the rules, winning its place in the Austrian government not by violence or intimidation but through the freely given votes of the Austrian people. Not only was its route to power perfectly consistent with the Austrian constitution, it conforms to both the letter and the spirit of the European Union's constitution as well.

It would be another matter altogether if the new Austrian government were to embark on a policy of discrimination against ethnic or religious minorities, or if it in some way infringed individual liberties or fundamental human rights. Should this occur, the European Union, of which Austria is a member, would be politically and legally entitled to

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intervene—indeed, it would be obligated to do so. But such transgressions are not taking place at the moment, nor is there any reason to think that they ever will under the present Austrian government. This is the case not only because the Freedom party does not rule alone but because, finally, Jörg Haider—despite the more florid rhetoric of some of his critics—is not a neo-Nazi demagogue, an Austro-fascist throwback, or another ultranationalist xenophobe, and certainly not Adolf Hitler, Saddam Hussein, or even Slobodan Milosevic.

He is, rather, an unsavory type of democratic politician who is also something of a compulsive provocateur and poseur. If he presents a threat, and he does, it is one that should be met not by rejecting the choice of the Austrian people but by giving them ample opportunity to reconsider. By contrast, the EU's diplomatic embargo seems calculated to turn Austria into a pariah state, a policy that may give some temporary satisfaction to the cosmopolitan defenders of a united Europe but is likely to backfire in the end.

IT SHOULD be recalled that Austria has made considerable progress over the past decade in joining what might be called the historical consensus of Europe. Most of official Austria has by now abandoned the myth that the country was the first victim of Nazism, and recent governments have begun to make amends for the collective amnesia that had previously gripped the nation. The country has formally recognized its complicity in the Holocaust, and has assisted in the restitution of Jewish property and Jewish-owned works of art. These are noteworthy achievements.

Even the agitations of the Freedom party must strike an impartial observer as notably less violent than those of most radical-Right or populist-nationalist movements in Europe, including especially the National Front of Jean-Marie Le Pen in France, with whom Haider is often compared. Not only are there no fascist militias in the streets of Vienna, or Nazi troglodytes emerging from their Alpine hiding places to take the Hofburg by storm, at the level of street agitation it is currently the *Left* that is far more vociferous in Austria than the Right. Already in early February, riot police and water cannons were required to deal with the thousands of jeering protestors, some of them carrying portraits of Che Guevara, shouting "shame, shame" and "resist, resist" upon the formation of the new Austrian government; so ugly was the mood of the crowd that the new cabinet chose not to walk the thirty yards from the president's office to the chancellery but took a tunnel to avoid the missiles and taunts. Since then, in addition to the mass demonstration of 200,000 Austrians on February 19, protests have become an almost daily occurrence in Vienna.

This, too—the mindless sloganeering of an infantile Left that is eternally replaying the Spanish civil war or other mythic scenarios of "antifascist" resistance—is another sign of the vacuum of values in contemporary Europe, and in its own way as laden with troubling portent as is the resurgent psychology of nationalist resentment on which Haider and others like him thrive. It would be hard to conceive a more effective means of strengthening both these polarizing tendencies than the nakedly bullying tactics adopted by the European Union in instituting sanctions against Austria.

That country assuredly has its own unfinished work of self-examination to do, in which a certain degree of outside pressure can be helpful and even cathartic. But until Europe rethinks the balance between its globalist ambitions and the democratic choices of its member states, allows people the elementary right to be judged according to their deeds, and above all ceases its grim determination to stamp out national feeling of any kind, we are in for only more instances of the Haider phenomenon, and worse.

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monopoly.com

Peter W. Huber

THE LATEST version of Windows, the operating system manufactured by the Microsoft Corporation, consists of some 30 million lines of tightly interconnected computer code: a programmer's *War and Peace*, running to some 500,000 pages. Is that the right amount? Too little? Too much? These questions might conceivably intrigue certain specialists, like other programmers; or, possibly, connoisseurs of what David Gelernter has elegantly called "machine beauty"—the technological mating of simplicity and power; or economists charting market efficiencies. The last question—is it too much?—has perforce come to intrigue lawyers as well, and specifically antitrust lawyers charged with protecting economic competition and the interests of consumers.

But how is an antitrust lawyer to determine that a "manuscript" as long as Windows 2000 is economically dysfunctional—that it has been coded, packaged, or licensed to do consumers more harm than good? He cannot. Nobody can. But neither can he just throw up his hands in despair, on the grounds that, in this one arena alone, economic law can somehow be dispensed with altogether. This dilemma is at the heart of the mind-bogglingly intricate trial now moving forward under Judge Thomas Penfield Jackson. (Jackson's "conclusions of law" may be issued this month, with "remedies" to follow thereafter.)

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Things were simpler a century ago, at least as the history books tell it. Trustbusters did not need a lot of legal or economic theory to explain why they went after the Microsofts of that era. Runaway corporate growth was bad, and people just knew it. In those days, too, the obvious remedy for "bigness" was "breakup," and that was how many of the landmark cases ended. A 1911 ruling by the Supreme Court divided Standard Oil into 30 separate companies. Judge Jackson knows this history well: "I don't really see a distinction," he remarked at a February 22 hearing, between John D. Rockefeller's "control over his oil" and Microsoft's dominance of the personal-computer (PC) operating system.

How big a legal difference there is remains to be seen, and may not be finally determined until after one or two rounds of appeals are exhausted. But there is certainly a political difference. The Clinton Justice Department and its assistant attorney general for antitrust, Joel Klein, are not just throwbacks to the populist trustbusters of a century ago, nor is the Microsoft litigation another grab for power on the part of a grabby administration. The truth is less political—and therefore less alarming—than that, if also, unfortunately, much less clear.

THE BASICS of the Microsoft case are straightforward enough. In 1981, IBM asked Bill Gates to supply a "disk operating system" (DOS) for IBM's first PC. That modest program provided the interface between the hardware—the screen, key-

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board, disk drives, and microprocessor—and the software—mainly, "applications" programs for spreadsheets and word processing.

In the years that followed, Microsoft relentlessly added new features and capabilities. The operating system grew by over one million lines of code a year. Many of the new features had first been sold by other vendors as separately packaged applications or "utilities" for modems, memory management, CD-ROM's, faxes, calculators, calendars, clocks, and cardfiles. But step by step, Microsoft inhaled them into DOS, and then into its successor, Windows.

With the expanding code has come an expanding array of contracts and copyrights, which define how the code may be used, repackaged, and resold. Software is extraordinarily malleable: independent vendors can (and do) graft on their own "dashboards," "wallpaper," and "skin"; they can (and do) change the inner workings for better or worse; they can enhance, infect, sabotage, or steal the code outright. Naturally, Microsoft's marketing units and lawyers did all they could—and possibly an illegal amount more—to make sure the company retained control of what Microsoft's programmers had crafted.

In 1994, a startup company called Netscape came up with an application to run on top of Windows. But this—the first good "browser"—was an application of a different sort. It supplied an interface not to the computer on the nearby desktop—Windows already did that—but to the countless remote computers that defined the World Wide Web.

Gates quickly recognized how serious a threat the browser-plus-Web presented to Microsoft's core business. With the power of the Web above—power residing in countless mainframes and servers that use no Microsoft software at all—the browser threatened to displace much of what had been operating on the desktop below. Through the browser, the Web might well *absorb* most of the desktop—unless the desktop, at the very least, absorbed the browser first. Netscape saw it that way, too: Marc Andreesen, Netscape's top technology officer, boldly promised to reduce Windows to an unimportant collection of "slightly buggy" "device drivers."

Microsoft was not about to be reduced without a fight. It quickly created a browser of its own: Internet Explorer. It forged tight links among Explorer, Windows, and other Microsoft applications for word processing and spreadsheets, and equally tight contractual links with vendors of hardware and providers of online services who could promote Explorer over Netscape. And it made Explorer "free"—which is to say, Microsoft simply folded the price of the browser into the price of Windows. Gates did not want the market for browsers any more than Andreesen wanted the market for operating systems. ("Operating systems?" Andreesen asked rhetorically, "We don't need no stinkin' OSes!") Both wanted to create an integrated platform that did it all.

Unfortunately for Andreesen, Gates had both the skill and the resources to win this battle in short order. But—so the government would allege—he used unacceptable tactics to do so. Last November, Judge Jackson agreed. Microsoft, he concluded, had unfairly jiggered the Windows code to favor Explorer over Netscape, and had bullied others in the industry into signing contracts to bundle Explorer, rather than Netscape, with their own hardware and online services.

There was no smoking gun in the trial, or in Judge Jackson's voluminous first-round opinion. There was just a mountain of detail, an account of intemperate Microsoft e-mails, pugnacious negotiations, contractual fine print, refusals to return phone calls—line after line of detail, piled higher and higher, sort of like Windows itself. What was critical in the opinion was the definition of Microsoft as a corporate monopoly in one market—Intel-based PC operating systems—aggressively extending its line of business into an adjacent but distinct market—browsers.

UNDERSTANDING THE economic issues at stake here requires another narrative. It too begins almost a century ago, and it concerns the basic contours of corporate America, yesterday and today.

Built in 1917, the Ford Motor Company's River Rouge plant in Dearborn, Michigan soon became one of the wonders of the industrial world, turning raw steel, raw rubber, sand, and silicon into automobiles. Ford made steel, made glass, made tires, assembled the parts—and did it all in one place. River Rouge absorbed the industries around it, or re-created them under its own roof.

But that is not the main trend today, at least not among what remains of yesterday's corporate behemoths. In-sourcing has given way to out-sourcing. Industrial companies are being chopped up; economic life is being disintegrated into sockets and plugs—new, standardized units of production and profit, with one vendor being plugged into the next. Thanks in large part to digital technology, an automaker can now deal with an independent supplier of engines as easily as with an engine division in its own company. And when it is as easy to deal with an outsider, there is a good chance that the outsider will perform better as well. Electronic

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links allow the market efficiently to combine arm's-length competition with extreme specialization.

That is why so many of yesterday's giants are shrinking so quickly. Single companies that used to operate the many layers of an integrated operation now specialize in far fewer. The logical if somewhat fantastical limit might seem to be a multitude of one-worker companies, all interconnected by way of the Web. That would assuredly spell the end of the line for antitrust lawyers.

But not so fast. Even as the old corporation shrinks, the new corporation expands. Microsoft and Intel, for example, have both grown extravagantly, by adding layer upon layer to their flagship programs and chips. Monsanto was recently accused of trying to monopolize global markets for corn and soybean seed, and then food production worldwide—a farfetched idea, but not quite so outlandish as it would have been only a few years ago.

What is it that makes these new technologies so expansive? The basic story is set out in an insightful paper written in 1998 by one Timothy F. Bresnahan: "New Modes of Competition: Implications for the Future Structure of the Computer Industry." Bresnahan, as it just so happens, is now the chief economist in the antitrust division of the Justice Department.

The old computer monopoly was IBM's, and IBM did indeed operate much like the old Ford. It supplied everything: punch cards, processor, printer, software, service. By contrast, the new computer industry, like industry in general, is defined by plug-and-play layers: microprocessor (Intel's Pentium chip), operating system (Windows), software application (Word), browser (Explorer), data link (modem + phone line, cable, or DSL), Internet service provider (Errol's), "portal" (AOL), search engine (Yahoo), and higher levels of content beyond (Amazon).

Few doubt that the new industry structure is more competitive than the old, but, as Bresnahan notes, the competition in each layer does not seem to last. One company—an Intel, Microsoft, or Yahoo—comes to dominate each layer. And once established, dominant positions tend to endure.

ECONOMISTS HAVE a pretty good idea why information-centered businesses can readily expand; Bresnahan elaborates on why they endure.

First, information comprises a large share of the products and services involved, and information scales up at very little additional cost. The first Pentium chip or copy of Windows 2000 costs billions to create, but both can then be replicated at almost no cost at all. So a single vendor can often serve the whole market more cheaply than could two or more competing suppliers. (Indeed, Microsoft's real challenge is not how to replicate Windows; it is how to stop others—like the good citizens of China—from doing so.)

Next, once a monopoly settles into place, "network effects" quickly stabilize it and lock in its advantages. Computer "platforms" are "social" networks—clusters of hardware and software provided by different vendors that operate harmoniously according to common but highly complex standards. Getting a lot of independent people to think and work in sync is very hard; getting them to stop, once they have finally worked out how to do so, is harder still.

The new monopolists also grow huge because their products are so adaptable—they thrive in many different markets. Intel's microprocessors show up in PC's but also in cars, toys, and microwave ovens. Oracle's software supplies an almost universal platform for tracking all kinds of transactions, and such tracking lies at the heart of banks, credit-card companies, and most forms of marketing and retailing.

Finally, once established in the market, chips and databases and genetically altered seeds can be expanded from within, very fast. Intel has added gates to its chips as fast as Microsoft has added lines of code to its programs, doubling and redoubling their capabilities year after year. Amazon builds a first Web platform to retail books, then easily adds drugs, toys, and yard sales. Thus, Windows has grown like a metastasizing tumor, and so have the chips on which it runs, and so have the many layers of the Internet that it has helped create.

So far, these trends have been most in evidence in what we think of as "software" markets. But "software" has now become the main engine of productivity and innovation across the economy—in farming, manufacturing, financial services, every form of marketing and distribution, and entertainment. Billion-dollar rigs and tankers on the high seas are all choreographed now by gargantuan computer programs that determine where to drill, how to pump oil from rock, how to move it, and how to price it. Hotels, air travel, the building of jets, and the manufacturing and selling of cars remain material enterprises around the edges, but most of the value and profit now depends on the information systems that design, route, book, and track.

In this manner are set the various layers of an industry slouching toward monopoly. If Exxon's software for spotting oil two miles below an ice shelf is just 20 percent better (say) than everybody else's, it is economically efficient and perhaps inevitable for Exxon to displace all other contenders

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in the drilling end of the business. The same goes for some other company (Shell, let us say) in the next layer if its computers give it a decisive edge in the very complex business of refining crude oil into gasoline. And so on, up the stack.

How THE monopolist in each layer emerges does not much matter, at least not after the fact. It may emerge because it was the best during the critical early years when the Manichean competitive battles are fought and won. Or it may emerge by historical accident, or dumb luck, with or without the help of nefarious scheming and bullying. But once a platform is widely established, it actually becomes "the best," in economic terms, however inferior it may "really be" in the eyes of people (like aficionados of Apple's operating system) who think they know better.

Equally clear, however, is that once a platform monopolist gets established, it can expand its turf pretty relentlessly, whether to improve the product or to crush potential competitors. And money is no object: after all, at stake for Microsoft in any challenge to Windows is the sum total of all future profits from that stupendously valuable franchise.

The scenario Bresnahan foresees is what he calls, borrowing a phrase from the evolutionary biologist Stephen Jay Gould, "punctuated equilibrium." For extended periods of time, platforms will simply improve, layer upon layer, and grow more entrenched as they do. But eras of stability "will occasionally be punctuated by epochs of radical change."

In the world of stacked monopolies, such transitions do not have to happen often to keep markets efficient. Each layer exists in a meta-stable state, perched between stable cooperation and what may abruptly become terminally lethal competition. That is why near-monopolist Bill Gates can testify, in all sincerity, that competitors surround him. That is why his company has behaved, all along, as if they really did, and why it was determined to kill Netscape. For we now know—in retrospect—that the advent of the browser did seem to present the possibility of a serious "punctuation" in the industry. Gates himself saw it that way, mobilized his legions, and fought back as hard as he could—as every good and honest competitor should.

So WHAT should antitrust lawyers do about all this? That Microsoft *won* the browser battle tells them nothing useful: somebody had to win. Still less can antitrust law turn on economic definitions, including the vigorous assertion, accepted by Judge Jackson, that "operating system" and "browser" are "separate products," and that therefore Microsoft's conduct can clearly be said to have engaged the old-style antitrust law of "tying" (bundling disparate products), "market foreclosure" (signing sweetheart deals with key suppliers or customers), "predatory practices" (cutting prices too aggressively), or "leveraging" (extending monopoly lines of business into adjacent markets). Just as no economic definition or theory is going to tell us whether an operating system should stop at 50,000 lines of code, or at 50 million, there is no objective way to ascertain from the inner workings of the code whether folding in new features—like a browser—represents the "tying" of two products or the "improving" of one, still less whether a two-box sale is economically more or less efficient than a one-box alternative.

Nor is monopoly itself a fitting target for today's antitrust law. Intel, Windows, Exxon, Amazon: as Bresnahan admits, one company is quite likely to emerge in each layer, with the software and social network that it takes to dominate, if not monopolize outright. That is just the new nature of things. Moreover, in this same new nature of things, it takes a monopoly to fight a monopoly; in order to stand a chance of competing, "a firm absolutely needs a reasonably defensible 'home monopoly.'" This, from the man who is currently the chief economist at the Department of Justice.

And so, if the fate of the old antitrust law was to protect competitors from each other that they might live to fight another day, the fate of the new, it seems, is to protect monopolists from each other—that they may live to fight another day. To accomplish this, the law has to focus, paradoxically, not on the big things but on the little things: those intemperate e-mails, pugnacious negotiations, and overreaching contracts. And perhaps—as Harvard's Lawrence Lessig argues in his new book, *Code and Other Laws of Cyberspace*—on some of the equally fine details of the underlying computer code. Mountains of detail will supply the best evidence we are going to get. Motives will be much of the story; sometimes, all of it.

It makes us uneasy when huge lawsuits hinge on mountains of small, often subjective, detail; but, let's face it, law often does. First-amendment and equal-protection jurisprudence, for example, frequently pivot on legislative intent, if only because scarcely a law can be written that will not somehow, somewhere, have an uneven impact, even if (usually) unintended. And there is something to be said for the notion that law and order are to be maintained by policing the little derelictions. An analogy here comes, ironically enough, from the "broken-windows" theory set out by James Q. Wil-

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son and George L. Kelling in a famous 1982 essay. Police the little things—the outer skin, the thin interfaces—and the big things will quite often take care of themselves.

Like it or not, that is where antitrust law is headed. Civility in the software neighborhood will be maintained not from the top down, but from the bottom up. It will be a matter of attacking blight, in code and in the contracts that go with it. Antitrust prosecutors will fight the symptoms of disease, because they cannot objectively define the disease at all.

AND HOW will they remedy those symptoms? Timothy Bresnahan asked that question in the article I have been citing. In answering it, he offered the image of a dog chasing a fire truck:

> They, Microsoft, are the fire truck. We also have the prosecutor and political supporters salivating at the prospect of a chase. Looks good. Right down the middle of the street, loud, red, crowd already assembled. But gentlemen, what are you going to do with it when you catch it?

As with everything else in this story, simple answers are maddeningly elusive. One proposal is to clone Microsoft: break it in two, give each new half of the company a complete copy of the Windows code, and set them loose. That would mean competition; it would also mean, in the short run, the demise of the Windows standard. And in the long run, it would not last—not if Bresnahan's theory is right. Monopoly will reemerge in the Windows-Intel layer of the market because economies of scale and network effects make it inevitable.

A second proposal is to break the company vertically, creating one owner of Windows and one owner (or maybe two) of Microsoft applications like Office and Explorer, and Microsoft's online services (MSN). If the antitrust authorities believe their own theories, they would have to leave these several entities free to attack each other—vertical competition being the only real hope for competition of any kind in these markets. But if owning the operating-system monopoly really does still confer an unfair competitive advantage, as the antitrust prosecutors have asserted, we should then expect, again, an inexorable march back toward a Windows package with a bundled browser.

However enticing all this may sound to legal academics, none of it can sound good to the two classes—consumers and competitors—who are said to have been Microsoft's principal victims. Few consumers would welcome such disruption: most of us, at this point, would surely rather stick with Microsoft and let it get on with the business of improving what we all now rely on, and we can hardly be cheered by the prospect of an assistant attorney general coming in with guns blazing to set us "free." Nor would most of Microsoft's main competitors feel any different. AOL—which now owns Netscape—knows that its future depends on the rapid continuing growth of well-equipped digital consumers, and it has far more to lose from the collapse of the Microsoft platform than from its robust survival. AOL's own business is thriving several layers above that very platform.

With no real support anywhere for a breakup, I doubt it will come to that in the end. (I have suggested elsewhere that Bill Gates should take the initiative and orchestrate his own breakup while he can still shape the terms, but *imposing* such a remedy on him would be quite another matter.) But if not a breakup, and if not a remedy involving money—the government has not brought that kind of case—there will have to be some kind of injunction, a "future conduct" remedy. According to its terms, Microsoft would be ordered to eschew certain specified strong-arm tactics, or quarantined from entering certain markets, or directed to publish some key parts of its code or maybe (at most) to spin off a division.

The main trouble with such "conduct" remedies is that they often lead to years or decades of stifling judicial supervision. They also tend to stifle competition along the fault lines being policed, which is to say, precisely where competition remains the last best hope for competition of any kind. Bottle up the monopolist to the south of the divide, and you foreclose even the potential for competition against the monopolist to the north.

A final irony is that whatever form the remedy takes, it may turn out to have been historically (as opposed to legally) unnecessary. The future the Justice Department was anxious to protect by joining the case on the side of Netscape has already been assured. The Windows-Intel desktop has peaked, and everyone from Silicon Valley to Microsoft headquarters in Redmond, Washington knows it. Henceforth, exactly as Netscape's Andreesen foresaw at the outset, capabilities will migrate out to remote servers and the Web, and users at home and in offices alike will be running their "net appliances" and "personal digital assistants" on stripped-down, non-Windows operating systems. By the time the Supreme Court ever gets to see this case, Microsoft's hegemony will be history.

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DOES THIS complete fizzle of a conclusion mean the case should never have been brought at all? Part of me longs to answer yes, but the serious reply must be no. The case has already had a direct impact on Microsoft's practices. The company has moderated its strong-arm tactics. Contracts have already been redrafted and toned down. Tight links between Windows and browser code have been severed. Those are all defensible results. It can reasonably be maintained that, going forward, they will enhance the overall level of competition in the industry.

Other companies with dominant positions in one layer of the market will certainly hesitate, in the future, to craft codes or contracts in the ways that got Microsoft in trouble. At Senate hearings in late February, the chief executives of AOL and Time Warner promised to open up a key interface—between Time Warner's cable properties and AOL's online services—that, until recently, Time Warner had been very determined to keep closed. This, too, from the point of view of the public good, is a defensible result.

Not long ago, the Bell System's phone switches were programmed to hand off all long-distance traffic to a single carrier, AT&T itself, not to MCI or Sprint; and Bell's network, and its customer tariffs, were designed to work only with Bell's own phones, not Radio Shack's. The most important and controversial sections of the massive 1996 Telecom Act, and the FCC regulations implementing it, concern the "unbundling" of the local phone company's "network elements" right down to the level of virtual space (bandwidth) within the individual telephone line leading to your home. The electric-power industry is now in the throes of being unbundled along similar lines, with generation being untangled from transmission and the different layers of transmission being uncoupled from each other.

What lies ahead is more of the same. For "operating system" and "browser," substitute any number of other hardware/software or software/software pairs that define the layers and interfaces of the new digital economy: "cable programming" (like CNN) and "distribution channel," for example; or "Visa/Mastercard network" and "competing bank"; or "airline reservation system" and "airline." This seems to be the way that software-dominated industries evolve—and, to a significant extent, we are all software industries now.

LAST YEAR, I suggested in these pages that litigation was precisely the wrong way to decide how to regulate our favorite poisons ("Guns, Tobacco, Big Macs—and the Courts," June 1999). But those poisonous products are static. We know exactly what they do, and how they are used and abused. We have debated their legitimacy for decades, in both legislative and regulatory arenas, both federal and state. Litigation cannot improve the quality of this kind of public debate, it can only detract from it.

Software and digital hardware, by contrast, evolve so fast that they remain forever new. We do not have a Bureau of Operating Systems and Browsers. And the bored-to-tears factor ensures that we will never have a really good public debate about the interface between programs and applications. Dispersed, case-by-case resolution of clearly focused controversies is the worst possible way to make law here—except for the alternatives.

Case by painful case, a common law of software code will thus emerge from the decisional mists, through the gradual and erratic accumulation of complaints filed, settlements agreed to, judgments entered, and appellate opinions rendered. If Judge Jackson gets it wrong, other judges deciding other cases can get it right, or at least less wrong. And however wrong the judges may end up getting things, they cannot get them as wrong as a Federal Computer Commission could: wrong for the whole industry, all at once, a wrong meticulously spelled out in hundreds of pages of the Federal Register.

This does not mean that such cases should be easy for the antitrust authorities to win. On the contrary: it is hopeless, and almost certainly harmful, to fight every market-expanding step taken by Intel, Microsoft, Amazon, or Exxon. The best programs are likely to take over huge market shares, and should. The most the antitrust police can hope to do is to spot the arrival of exclamation-point changes in technology, and then see to it that established monopolists do not go overboard trying to secure the status quo. It is for the rest of us to police the police.

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"Elián, Take Me With You"

Mark Falcoff

A FEW days before last Thanksgiving, a group of Cubans set out for the United States on a homemade raft. Such incidents are far from uncommon these days. Far from uncommon, too, was the fate of these passengers, all but three of whom perished at sea. When their ramshackle boat fell apart, two of the three survivors managed to swim to shore. The third, a five-year-old named Elián González, clung to an inner tube until he was picked up by some fishermen who fortunately happened by. On their own initiative, the rescuers took the boy to a hospital on the U.S. mainland, where he was treated for shock. Immigration authorities then released him to relatives in Miami.

In due course it was discovered that little Elián, like many Cuban children, was the product of a broken home. After his parents' divorce several years ago, his mother had taken up with the male companion who was accompanying her, and who perished with her, on the dangerous voyage across the Florida straits. Nor was that all. Elián's father appeared to be a member in good standing of the Cuban Communist party and an employee at one of the tourist hotels in Havana—which is to say, he belonged to that privileged Cuban elite with access to dollars. Not unnaturally, the father wanted his son back, and said so, though in language so intemperate and so politically charged as to suggest that he was being driven by something more than just a father's anguish.

Still, the issue at first seemed fairly straightforward. Should not a child who has lost his mother be returned to the custody of his father, even if the father suffers the misfortune of living under a highly repressive political system? American family law certainly seemed to be on the side of Señor González, and the U.S. courts may yet find on his behalf. But what looked early on like a simple child-custody case—with some additional glitches relating to peculiarities in our immigration laws—has become far more than that: the centerpiece of the sharpest political conflict between the United States and Cuba since at least the Bay of Pigs.

In Cuba itself, the case evidently electrified opinion (at least at the beginning). For days and even weeks, work on the island appeared to halt as Fidel Castro convoked huge demonstrations in front of the former U.S. embassy in Havana—the building that now houses the U.S. interests section—to demand the boy's return. By all accounts, the episode managed to unite Cubans of the most varied political tastes, producing a froth of nationalist resentment and leading all but the most dissident members of society to close ranks behind their aging dictator. For his part, Castro—who had had a particularly bad political year in 1999—clearly regarded the Elián case as a gift from the gods; according to the *New Yorker*'s Jon Lee Anderson, the aging strongman could hardly stop talking about it. For the first time in many years, Anderson suggests, Castro felt wholly and

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completely in touch with public opinion in his tattered and shattered country.

Meanwhile, in Miami, the Cuban-American community responded with equal passion, demanding that the boy be allowed to remain with his relatives in the United States and angrily threatening to close down the city and block traffic on the highways of Dade County if their wishes were not respected. Some of the comments uttered by demonstrators in Miami—which the American press, particularly the *New York Times*, relayed with relish and in rich detail—were almost as anti-American in tone as those being shouted by Castro's rent-a-crowd in Havana. For the first time ever, the Cuban community of Miami found itself sailing against the prevailing political winds in the United States, where a solid majority was reported to agree with Elián's father and, by extension, with the position of the Cuban government. Castro himself has been said to regard this development as a sea-change in American opinion that will soon lead to other, more significant advances like the lifting of the embargo and U.S. recognition of his regime. And who is to say that he is wholly wrong?

In large measure, little Elián González is a victim of two contradictory and conflicting American policies. One is the Cuban Adjustment Act of 1964, which grants automatic political asylum to any Cuban who manages to make it to the United States; at the time of its passage, this piece of legislation, obviously inspired by the cold war, seemed to require very little of us in exchange for scoring major propaganda points against the Communist regime. The other is a migration agreement reached with the Cuban government in 1994: it mandates the immediate return to Cuba of any Cuban nationals who happen to be picked up on the high seas—that is, who do *not* manage to make it to the U.S. mainland. Under the terms of the second policy, had it been the U.S. Coast Guard and not some fishermen who plucked little Elián out of the water, in all probability he would have been sent back to Cuba immediately and nobody would ever have been the wiser.

To those Americans—not all of them Cuban exiles—familiar with the details of the 1994 migration agreement, this arrangement is wrongheaded and even immoral. But it does serve a concrete humanitarian purpose. More than half of the individuals who set out from Cuba on rafts bound for Florida perish on the high seas, many of them devoured by sharks. The aim of the agreement is to discourage such enterprises. An additional incentive is the 20,000 U.S. visas now awarded each year to Cubans who follow the rules and patiently wait their turn. (Needless to say, the number of applications for these 20,000 places runs into the hundreds of thousands.)

Should Elián be allowed to remain in the United States, Castro would be in an excellent position to claim that Washington had violated its own migration agreement, and then to retaliate by unleashing a huge flotilla of rafters just as he did in another election year—1980—when he also helped to sink the election prospects of another Democratic candidate. That is one reason why the Clinton administration, which negotiated the 1994 migration agreement, is understandably nervous about the Elián case. It has probably already cost Vice President Gore, the President's presumptive successor, Florida and maybe even New Jersey, two states rich in Cuban-American voters. To complicate matters further, other ethnic groups—and particularly blacks, who form the core of the Democratic constituency—resent the special treatment awarded to Cubans under the older law. Meanwhile, as administration officials have been hiding under their desks and waiting for the courts to bail them out, Republicans on Capitol Hill as well as both major candidates for the Republican presidential nomination have chosen to embrace the cause of Elián as their own.

As the matter drags on, everybody else seems to want to get into the act, too, including a whole range of personalities, organizations, and constituencies not normally associated with matters Cuban. Congressional liberals like Joe Moakley, a Democrat from Massachusetts and one of the self-styled paladins of "human rights" in the lower house, have solidly lined up behind Castro, as have leading members of the congressional black caucus—not just Charles Rangel of New York, who has been carrying Havana's water on Capitol Hill for many years, but such bizarre personalities as Maxine Waters of California. Although these people claim to be motivated solely by considerations of family reunification, and go out of their way to deny that their concern has anything to do with Castro or Cuba, it is difficult—nay, impossible—to imagine them having mobilized to send a child back to Duvalier's Haiti, or even Pinochet's Chile.

As for the quality press, with commendable exceptions like the *Washington Post* and the *Wall Street Journal*, it has rushed to support the position of the Cuban government, no doubt more out of hatred of the unacceptably conservative Miami community and a deep-seated anti-anti-Communism than out of any great solicitude for the welfare of a child. This has been true not only of the *New York Times* but of papers as far afield as the Minneapolis *Star-Tribune*. They have been joined by the sup-

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posedly "right-wing" but predictably anti-American *Economist*, which has explained to its British readers that while Cuba is not a free country, at least *there* (as opposed, presumably, to Miami) "children are generally well looked after."

EVEN MORE remarkable has been the sudden embrace of family values by the National Council of Churches (NCC), an organization normally in favor of just about every antifamily measure that has ever succeeded in landing on the legislative agenda. In what appeared initially to be a brilliant political ploy, the Council decided to bring Elián's two grandmothers to the United States—in a chartered jet, no less—to press the case for his return.

Unfortunately for the NCC, the episode did not turn out quite so well as expected. After many negotiations, the ladies, dressed and coiffed with an elegance unavailable to any woman in Cuba save the wife of a senior minister or flag officer of the armed forces, met with Elián on what was thought to be neutral turf: the home of Sister Jeanne O'Laughlin, a Dominican nun who is president of Barry University in Miami. The encounter was an eye-opener for Sister O'Laughlin, who, thanks to an airport delay, was able to spend an extra hour alone with the little boy and his cousin, a young woman about the same age as his deceased mother who has been caring for him since his arrival.

"It became clear to me," Sister O'Laughlin later wrote in an op-ed article, that Elián had "transferred his maternal love" to his cousin. When the grandmothers finally arrived, Sister O'Laughlin was struck by how deeply in thrall they were to their official Cuban escort, and this in turn led her to wonder why Elián's *father* had not come to the United States. "What, if not fear," she asked, "could keep a person from making a 30-minute trip to reclaim his son? And what might Elián's father fear, if not the authoritarian Cuban government itself?" What, indeed.

Although Sister O'Laughlin did not mention it, during the meeting the grandmothers behaved in an extremely odd fashion, asking little Elián to stick out his tongue and unzipping his pants to fondle his private parts. These days, such conduct on the part of an adult family member in the United States would be termed an instance of child abuse and lead to prompt judicial sanction. In this case, however, the media very quickly produced statements from "academic experts" (including the well-named Professor Max Castro of the University of Miami) to assure shocked readers that in many parts of Cuba such behavior is "folkloric"—which would certainly come as news to the more than one million Cubans resident in the United States.

It is intriguing to speculate whether the grandmothers purposely meant to disqualify themselves as fit custodians, thereby advancing the possibility of their grandson's remaining in the United States.* It is even more intriguing, following Sister O'Laughlin's lead, to speculate why the National Council of Churches decided to bring over Elián's grandmothers rather than his father. Might the NCC, and the Cuban government, have been a little worried that Señor González himself would decide to remain here, thus spiking the whole issue of "family reunification"?

Some such hypothesis is bolstered by the testimony of Reverend Kilari Anand Paul, president of a pacifist organization in Texas called the Global Peace Initiative. In early February, Reverend Paul went to Cuba with, in his words, "an open mind, and with the desire to achieve family reunification." Having never been to the island before, he was immediately struck by the "fear that grips everybody": "I have visited numerous countries that suffer oppressive political regimes," he told *El Nuevo Herald* in Miami, "but never have I felt the level of repression, control, and intimidation over people that I felt in Cuba." During his three-day stay in Havana, Reverend Paul met with government functionaries and religious leaders, and he also went out into the street to learn at first hand the opinion of ordinary Cubans. But his major objective was to meet Elián's father and ask him face-to-face whether he wanted to visit his son in Miami. His request to meet Señor González without the presence of Cuban government officials was, however, peremptorily denied.

Still, Reverend Paul did manage to speak to a number of the father's friends, all of whom assured him that, in fact, Señor González wanted his son to remain in the United States. But, they explained, the father was a virtual prisoner, incapable of expressing any opinion at variance with that of the government. As for the nationalist fervor so evident in Cuba earlier, that would seem to have blown over by the time of Reverend Paul's visit. More than one Cuban told him: "Return the kid here? Are you kidding? Who would want to come back here to suffer our shortages and lack of freedom?" Which leads one to suspect that some of the vitriol expressed by Cubans in those early demonstrations may have masked envy

* Since her meeting with Elián's grandmothers, Sister O'Laughlin has also revealed that, ten days before the raft's ill-fated journey from Cuba, one of the boy's grandfathers had telephoned a relative in Miami to alert him to the hoped-for imminent arrival of Elián and his mother. Subsequent to divulging this bit of news, which she reported having been told by the grandmother in question, Sister O'Laughlin received several telephoned threats—surely not from Miami's "right-wing" Cuban community.

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at the boy's fate. Lately, in any case, a new adage has been circulating in Cuba: *Elián, amigo, llevame contigo*—Elián, be a buddy, take me with you.

However the case of Elián González turns out, of one thing we can be sure: it sheds considerable light on what might be called our Cuba problem. How are we to deal with a totalitarian regime, 90 miles from our shores, which as a matter of policy keeps its people in such submission and starvation as to compel many of them to risk their lives at sea in hopes of reaching safety here?

It is an embarrassing question, and one that many American liberals would rather not answer. Since the end of the cold war, the whole idea of socialism has been so signally repudiated in so much of the world that Castro's Cuba, a unique remaining talisman of bygone utopian hopes, simply cannot be allowed to disappear. To be sure, this is not the way liberals *talk* about Cuba—not at all. Rather, they say that if only *we* changed *our* policy, there would ensue on the island a gradual political liberalization that would work to the benefit of all concerned.

Among those who push this line, some actually do not want political liberalization in Cuba at all. Rather, they imagine that lifting the U.S. trade embargo would throw the regime an economic lifeline. This is a delusion. The Cuban economic system, such as it is, was propped up for 30 years by a generous subsidy from the now-defunct Soviet Union. That subsidy amounted to roughly $6 billion a year, which is to say that, over three decades, Cuba received the rough equivalent of ten Marshall Plans (in constant 1947 dollars). Today it survives on tourism, remittances, and, probably, money-laundering services for South American drug lords.

Tourism—even massive tourism from the United States—could never compensate for this lost Soviet subsidy, for the simple reason that Cuba must import food and other goods to provide for foreign visitors. As a result, the government probably retains, at best, only 25 cents of every tourist dollar, which means that in order to net even $3 billion—half of its previous subsidy from the Soviet Union—it would have to gross somewhere between $12 and $15 billion from that one industry alone. This is clearly impossible: Mexico, whose infrastructure and menu of offerings far outstrip Cuba's, grosses slightly under $8 billion annually from tourism. In effect, with an economic system designed to suppress initiative and to create artificial scarcities for purposes of political control, there is no likelihood of Cuba's ever finding the external resources sufficient to compensate for its former privileged status in the Soviet empire.

Then there are various American concerns that want to do business with Cuba: hoteliers, cigar importers, agribusiness tycoons, travel agents, and so forth. Most of these tend to keep a rather low profile on specifically Cuban issues, instead supporting such generically named organizations as USA-Engage that oppose the use of sanctions worldwide. Included under this heading are the U.S. Chamber of Commerce, the Farm Bureau (which imagines that Cuba—a country where the average person earns $10 a month—would be a wonderful market for U.S. foodstuffs), and some American politicians from farm states, like Governor George Ryan of Illinois and Jesse Ventura of Minnesota.

In these quarters, obviously, nobody particularly cares about "saving" the revolution—in fact, there is little interest in the particular form of government that Cuba (or, for that matter, Iraq, Iran, Syria, or Libya) happens to have at any given moment. The prevailing mindset is rather reminiscent of a pharmaceutical executive I once knew who visited Vietnam in the period just before normalization of relations with the United States and came back mesmerized. Though a conservative Republican and a former Reagan administration official, he was determined to work on behalf of better relations with our former enemies. When I asked him why, he exclaimed, "Wonderful country! Hard workers and—best of all—*no labor unions*."

Finally there are the American diplomats, publicists, and foreign-policy specialists who are frankly embarrassed by the continuing necessity of standing alone on the Cuba issue at the United Nations or in the World Trade Organization and other international forums. Their discomfort is in some ways understandable: after all, the United States now observes correct and perhaps even cordial relations with Communist China and Vietnam, and for all we know may soon open an embassy in North Korea. How to explain to foreign colleagues just why Cuba—a Caribbean island of no great strategic or economic importance—should occupy so large a space in our foreign-policy considerations? More sincerely than the National Council of Churches or Congressmen Moakley, Rangel, or Waters, such people believe that U.S. interests, and even the goal of a gradual democratic transition in Cuba, would be best served by a more normal relationship with the Castro government.

Their views are not to be lightly dismissed. For one thing, they are shared by many Cuban dissidents on the island and by some important exiles—though probably not many in Miami, where the few visible "normalizers" appear to be either sympathizers or agents of Castro. And as for the substance of their position, it is true that whatever international sympathy Cuba has been able to garner since 1989—particular-

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ly in Latin America, Western Europe, and what might be called Jimmy Carter's America—has been based on its status as a victim of the world's only surviving superpower. Normalizing relations with Castro would arguably deprive him of this status, not to mention ruining the breakfasts of the foreign ministers of France, Sweden, and Canada. It might also deprive him of what remains of his nationalist mystique—his capacity to redirect his people's resentment of their hardships from him and his regime toward the United States.

But, despite what we are often told, what it would not do is to bring down the regime. Totalitarian dictatorships, after all, survive not on superficially plausible excuses like foreign-trade embargoes or the hostility of neighboring powers but on their police and intelligence apparatuses and their control of every aspect of economic life. Nor is it even necessarily the case that U.S. diplomatic recognition and trade would lead to political liberalization.

For many years now, foreign investment has been limited to joint ventures in which the Cuban government decides whom the foreign company will hire and regularly expropriates for its own purposes up to 90 percent of the salary earned by Cuban employees. Small Cuban-owned businesses are prohibited (except for restaurants set up in private homes), and even the categories of self-employment are strictly limited. So far, in fact, extensive foreign investment, mainly in the tourist sector, by Canada, Spain, France, Italy and Mexico has had no effect whatsoever in ameliorating the repressive political climate.

The sudden appearance of U.S. investment *could* have a significant impact, but all in the wrong direction. It would validate the Castro regime historically, convert the U.S. embassy into a formal apologist for repression (as in present-day Haiti), and call into life a new lobby of high-priced Washington lawyers representing American investors, the sole purpose of which would be to dampen any troublesome concerns in Congress and elsewhere over the condition of human rights in Cuba. That is the way things worked for Somoza, Trujillo, and Batista—why not for Castro, too?

IN THE end, our persistent Cuba problem has its origins in our own national character and values. Americans like to think that their country is different from the cynical and self-seeking European model, that it stands for something more than mere national interest. Of course, lest we forget, many are prepared to remind us of how often we have transgressed that code; but the very fact that we can be called to account suggests the breadth and depth of the bedrock American commitment to freedom. This is what distinguishes us even from other democracies like France, Spain, Italy, or Japan, and what stands in the way of normalizing relations with Cuba. Although taking that step could conceivably serve a number of national purposes, advancing the cause of freedom and affirming our solidarity with the suffering Cuban people are not among them.

Our Cuba problem also arises from a more recent and peculiar source. Because the cold war ended so neatly and peacefully, many people have forgotten, or have chosen to forget, that the victory of the West was the product of 40 years of patient, difficult, and unremitting political warfare—and huge expenditures on armaments. Nowadays, instead, we are told by our historical and political revisionists that the Soviet Union was never a threat in the first place, but a paper tiger conjured up by "cold warriors" or by the military-industrial complex. And if the mighty Soviet empire turned out to be a chimera, why should we trouble ourselves over Cuba?

This issue is not merely theoretical but has broad practical implications. True, with the collapse of the Soviet Union, Cuba has apparently ceased to be a serious security threat.* But in depriving his people of basic liberties and even, for the most part, of basic sustenance, Fidel Castro is provoking thousands to risk their lives in the extremely perilous enterprise of trying to reach the U.S. mainland on jerry-built craft. Thanks to Castro, most Cubans are going hungry today; the island's vaunted medical system is being used to earn dollars from foreign "health tourists"; and its educational system is running short of chalk and pencils. In the case of General Cedras's Haiti, this sort of tyrannical behavior was regarded as so intolerable that we only yesterday assembled an armada of troops to invade and overthrow his government. Somehow, when it comes to Cuba, it is seen as all in a day's work.

In this connection, one cannot but be struck by the incuriosity of many Americans—particularly those most anxious to send Elián back—as to just why it was that his mother risked and lost her life on his behalf. Although poverty, even extreme poverty, exists in many other countries in and around the Caribbean, only in Cuba are misery and helplessness and unfreedom a deliberate government policy, implemented with unusually un-Latin thoroughness. As long as this is the case, Cubans will continue to want to flee their country in large numbers. As for the United States, as long as it remains true to its history and values, it will, and should, continue to have a Cuba problem on its doorstep.

* I say "apparently" because Castro is rumored to have an important biological-warfare capability, and there has even been serious speculation that he may be nourishing a scenario to end his regime in flames and glory by provoking U.S. military intervention.

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OBSERVATIONS

The "New Yorker": Legends of the Fall

Noemie Emery

WHAT BECOMES a legend most? Clearly not silence. A legend in their own minds, and perforce in ours, the survivors of William Shawn's old *New Yorker* magazine cannot get over themselves, their specialness, their panache, their elegance, their sensitivity—or the wrong done to them and their culture when it was all put into eclipse. Especially, they cannot get over "Mr. Shawn," as they call him (everyone else they tend to dismiss by surname alone), the greatest editor of the greatest magazine that ever existed.

It was Mr. Shawn who arrived in 1935 to help turn Harold Ross's humorous little weekly into a serious outlet for high thought and deep purpose. It was Mr. Shawn who in 1952 became editor upon Ross's death and thenceforth, for 35 blessed years, held the line against glitter and mere commerce, disdaining the glamorous advertisements that kept his sheet solvent (one regular ad, for fur coats, pictured the likes of the bewrapped playwright Lillian Hellman and the line, "What becomes a legend most?") and making a home for a unique clique of rarefied spirits: themselves. Then, too soon, came the ouster from Eden: Mr. Shawn (aged seventy-nine!) was fired, his disciples were scattered, his great estate was looted by vandals: first by Robert Gottlieb, who had edited *popular* books in his old job in publishing; then by Tina "The Terrible" Brown, the high priestess of the moment and of Mammon. Between them, Gottlieb and Brown destroyed the *New Yorker*, and a national treasure was lost.

But was it? More or less in conjunction with the magazine's 75th anniversary, three memoirs by Shawn staffers—*Gone: The Last Days of the New Yorker* by the novelist and critic Renata Adler,[1] *Remembering Mr. Shawn's New Yorker* by the veteran contributor Ved Mehta,[2] and *Here But Not Here: My Life with William Shawn* by the reporter Lillian Ross,[3] who was also Shawn's longtime lover—join in draping still more crepe on the enterprise. But sadly for them, more objective volumes—especially Carol Felsenthal's *Citizen Newhouse*,[4] about the man who bought the *New Yorker* in 1985, and Ben Yagoda's *About Town: The New Yorker and the World It Made*[5]—offer a more rational, not to say a great deal less flattering, view in which Shawn's "enchanted kingdom" (Mehta's words) stands forth, in Yagoda's accurate characterization, as plain "creepy."

HAROLD ROSS founded the *New Yorker* in 1925 to amuse himself and others, to be witty and humorous, to express the sensibility of a great metropolis approaching its own golden era. "I started this magazine because I thought it would be so much fun," Ross wrote to a friend.[6] But as time passed and things became much less funny, especially during and just after World War II, Ross also began to publish tales of the larger world and its troubles: Rebecca West on crimes, war crimes,

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[1] Simon & Schuster, 252 pp., $25.00.

[2] Overlook, 414 pp., $29.95.

[3] Random House, 240 pp., $25.00.

[4] Seven Stories, 512 pp., $29.95.

[5] Scribner, 480 pp., $27.50.

[6] His correspondence has been newly edited by Thomas Kunkel, *Letters From the Editor: The New Yorker's Harold Ross*. Modern Library, 428 pp., $26.95.

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and treason; John Hersey's *Hiroshima* and *Survival*. The magazine was in its own golden era when Ross died unexpectedly in 1951.

In William Shawn, it seemed at first to have been left in good hands. The new chief was a fifteen-year veteran of the *New Yorker* and an editor of genius, able to slip seamlessly into a writer's personal style, altering the text in most ways for the better while making it still more the writer's own. He was wholly devoted to the *New Yorker*, which had become his entire existence. But he was also a knot of neuroses, which would in time entangle and undermine his magazine.

Shawn, it is clear, was aggressively passive, assertively diffident, a megalomaniac with no sense of self. The youngest of a large family, as Lillian Ross informs us, he was "the one to be shielded in every way from hurt, from ugliness, from the facts and instances of illness and death." Later, he had to be sheltered from other things as well: from commerce and greed; from harsh, ugly noises; from the stresses of everyday living. "He had never been able to fly in a plane," Miss Ross writes, and "he could not go outside in a heavy storm, rain, or snow, or in a deep freeze." What he liked about editing was that it allowed him to become "invisible," and so intense were his efforts at self-effacement that he began to doubt that he himself existed. "'Who am I?' he would ask me. 'Am I really here?'"

Self-effacement, fragility, the need for protection—these became the dominating marks not only of Shawn but of his regime as well. Eventually, the whole tone of the magazine reflected this cast of mind. In the late 60's and 70's, especially, Shawn's native fastidiousness found a good match in the Left's abhorrence of striving, commercial, middle-class America—not to speak of imperialistic, war-mongering America. He stocked his staff with like-minded people, including the pacifist Jonathan Schell and the environmental minimalist Bill McKibben, whose most recent works urge people to have no more than one child, and not to spend money on holidays.

With the steady influx of people like these, the muscular glamor that marked the *New Yorker* in the FDR era gave way to the plodding righteousness of the age of McGovern. The magazine took on a marked countercultural tenor—if such a thing can be said of a quintessentially establishment publication—attacking large corporations, the American Medical Association, the National Rifle Association, and always the military. Urbanity was replaced with correctness, and the criterion of moral gravity shifted from Manhattan to the universities.

INTERNALLY, THE magazine was becoming quite dangerously cult-like by this time, completely wrapped up in its mission and image—"the sole embodiment," in Ben Yagoda's words, "of civilization and civilized values in a debased and crumbling world." "Shawn didn't just hire writers," Yagoda continues, "he anointed them" into a secular "religious order" of his own. Renata Adler agrees: "the gravest sin," she testifies in *Gone*, "was selling out, which could mean anything from having a life in the world outside the magazine to becoming famous [or] publishing elsewhere."

Once on staff, however, writers were granted a kind of indulgence seldom to be encountered in the outside world, allowed to pick obscure topics and then to dilate upon them endlessly. Even Adler admits that these interminable essays—on metals, or wheat—had "long, boring stretches." Mehta, who filled many pages of the magazine with tales of his childhood in India, admits that he "often had trouble reading even the *New Yorker* pieces of colleagues who were good friends of mine."

The indulgence obviously won the devotion of some writers, but it broke the morale of several others, who, given forever to "do a piece justice," never seemed able to get it just right. Shawn's habit of buying articles and then not publishing them for months—or years—drained the joy out of writing. "Under the pressureless pressures of being left alone to do what they liked," concedes Mehta, "people fell apart, . . . had nervous breakdowns, or developed writer's block, which sometimes lasted for years." J.D. Salinger, the magazine's fiction star, became totally silent; another writer published nothing for three decades. In *Citizen Newhouse*, Carol Felsenthal quotes a longtime staffer on the atmosphere in the office: "as weird a place as you can possibly imagine," the staff "inbred, insular," out of this world.

IT BEGAN to fall apart in January 1985, when Peter Fleischmann, son of the *New Yorker*'s original owner, sold the magazine to S.I. Newhouse, owner of a string of middlebrow newspapers and of the Condé Nast family of publications, including the popular *Vanity Fair*. Shawn, by then seventy-seven, resisted corporate pressures to name, much less groom, a successor. (As Mehta puts it, "Merely having a successor in place, as if the *New Yorker* could run just like another business, went against everything he believed in.") One who was eventually named died shortly thereafter. Another was allowed to go off to run a different magazine. Although Shawn did promote his protégés Schell and McKibben, they were dismissed by the staff as too young and/or too arrogant. He then was thought to have picked an editor named Charles McGrath (now the editor of the *New York Times Book Review*), but, as Felsenthal says, he too "was never quite chosen." Adler explains: "By then, it had become clear to many of us that Shawn did not want a successor," and that the process was just a "charade." Finally Newhouse lowered the boom.

The *Anschluss* part of this myth-

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ical saga—to hear it told, the worst thing arguably since Pearl Harbor—took place on January 12, 1987, when Newhouse announced that Shawn had been fired and Gottlieb installed in his stead. To Jonathan Schell, this was "an act of unconscionable violence." Mehta: "In one stroke, Newhouse had destroyed the *New Yorker*, into which Mr. Shawn had poured his heart and soul." The staff drew up a letter, asking Gottlieb not to come over. The effect of this letter on Newhouse was to impel him to advance the date of Shawn's ouster from March 1 to February 15.

A distinguished editor at a prestigious house (Knopf), Gottlieb suffered from the sole flaw of being an outsider: had he been sensitive enough to have run the *New Yorker*, he would have been too sensitive ever to come. But he did; and when he did, William Shawn was stunned to find that his friends who had written the letter and who he was sure would "go down in the elevator and never come back" (Mehta) behaved as if nothing had happened. One who stayed was Mehta himself, to compile a damning case against the usurper. He installed a coffee machine! And a Joan Crawford poster! He killed a three-part piece—by Mehta—in favor of a story (by Doris Lessing) that Mr. Shawn had rejected! He dared to edit—and cut!—Mehta's work! Not to be outdone in the sensitivity sweepstakes, Adler weighs in with her own list of Gottlieb offenses. He cut! He introduced graphics! He put in horizontal ads!

Could things get much worse? They could, and they did. In 1992, Gottlieb was himself ousted for Tina Brown, a young Englishwoman who had been editing *Vanity Fair* to great éclat and who had once described the typical story in Shawn's *New Yorker* as "the 50,000-word piece on zinc." With her accession out went zinc, in came zing, along with buzz, flash, and style. By 1998, when Brown herself left, to be succeeded by David Remnick, a prolific and serious journalist, the *je ne sais quoi* had totally vanished. The golden bowl was broken. The *New Yorker* was . . . gone.

ONLY, THE bowl was never that golden. Much has been made by the "old" *New Yorker*'s acolytes of Tina Brown's transgressions—the special issue edited by Roseanne, the syrupy fawning over Princess Diana, the occasional incendiary cover. But she also published essays—by Joan Acocella on Mikhail Baryshnikov, by Connie Bruck on Hillary Clinton, by David Remnick on the political afterlives of Gary Hart and Mario Cuomo, by Michael Kelly on anything—that were as good as, if not better than, anything published by Shawn. The difference was that where Shawn ran a great deal of bilge that was precious and boring along with some good things, Brown's good things were accompanied by a great deal of bilge from the other direction: trendy, glitzy, eager to shock.

In looking back over the *New Yorker*'s history it seems clear, indeed, that the real damage took place not in the transition from Shawn to Gottlieb, or from Gottlieb to Brown, but way back in 1952 in the transition from Ross to Shawn and then in the years afterward as Shawn grew ever more Shawn-like. Unlike his successor, Ross was not insular; he was not effete; and he needed protection from nothing. His correspondence reflects contact with a wide range of people—Westbrook Pegler, Rebecca West, J. Edgar Hoover, Ginger Rogers, Joseph P. Kennedy—most of them well out of reach of Shawn's narrow wavelength. "Ross was a man of enormous social energy and mischief, and he was not reluctant to use pieces in the *New Yorker* as a means of settling feuds, or even starting them," David Remnick has written.[7] Whatever one thinks of his particular species of élan—"I believe in malice," Ross once told a complaining Henry Luce—there was no sign of it either in Shawn or in his product, which rather came to resemble the morgue that Tom Wolfe called it in a famous parody in 1965. And from there things only got worse.

In *Gone*, Renata Adler looks back to the time when the *New Yorker*'s audience formed a commune of people who not only read the magazine but defined themselves by it. This has its truth, but is also seriously overwrought. People who create things often exaggerate the space their works occupy inside others' minds. It can take a long time to write a song, score a song, interpret and record a song, so that others can listen to it for several minutes and find it pleasant. One can work for years on a book, so that others can read it in several hours. One can work for weeks on an article so that others can read it, digest it like breakfast, and then go and have lunch.

What these *New Yorker* revenants show in their endless fascination with their own moods and feelings; their living arrangements, feuds, and office politics; their own writing (often bad) and thinking (worse) is everything that was ever wrong with their magazine. "You want to have company, a person, an affiliation, a community," says Adler, inadvertently exposing the heart of the matter. For a time, under Shawn, a small group of people had an affiliation and a community, a safe nest, a warm bath, an identity that permitted them to think themselves better than others; and now they have it no longer. This is a great loss to them, but not to publishing—and, to judge from the quality of their books, not to the world.

[7] In his introduction to a collection of profiles from the *New Yorker* entitled *Life Stories*. Random House, 530 pp., $26.95.

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OBSERVATIONS

Are American Jews Moving to the Right?

Murray Friedman

FOR AT least two decades, political pundits have regularly seen auguries of a shift toward conservatism among American Jews, and, just as regularly, their prognostications have been proved wrong. Time and again, Jews in overwhelming numbers have ended up voting for liberal or Democratic candidates in national elections. Bill Clinton alone, in his two runs for the presidency in 1992 and 1996, succeeded in capturing a Jewish vote of almost New Deal or Great Society proportions.

But the pundits have not been altogether misguided, either. For if, at the national level, Jews have predictably voted Left, at the state and local level things have been more complicated and more interesting.

In 1997, running for reelection in New York City against an all-out liberal Jewish Democrat, Rudolph W. Giuliani, a law-and-order Republican, garnered some 75 percent of the Jewish vote; in his previous two races against David L. Dinkins, who served as mayor from 1990 to early 1994, Giuliani had already won two-thirds of that vote. Much the same pattern has emerged in the second largest center of American Jewry, Los Angeles, where a liberal administration heavily supported by Jews was overturned by Republican Richard J. Riordan, a Roman Catholic businessman whose trademark issues have been efficient government, jobs, and public safety. In his successful bid for reelection in 1997 against state senator and former student radical Tom Hayden, Riordan's share of the Jewish vote climbed to 71 percent. Strong Jewish backing likewise helped elect Republicans George Pataki in New York, Jeb Bush in Florida, and Christine Todd Whitman in New Jersey (though Senator Alfonse D'Amato's share of the Jewish vote fell from a previous high of 40 percent to 27 percent in his unsuccessful 1998 bid for reelection in New York against Charles Schumer).

Nor is it only in balloting that a shift in sentiment can be perceived. Coming to the fore lately has been a new class of Jewish politicians who are uncomfortable with many of the old liberal dogmas. Among the most vocal is Stephen Goldsmith, who recently stepped down as mayor of Indianapolis. Determined to apply market solutions to urban problems, Goldsmith reduced the cost of government in his city by about 25 percent while trimming the municipal workforce by a third. Although committed to the public-school system, he has also supported school-voucher programs in order, as he has said, to "create competition and better services."

Goldsmith is a Republican, but another Jewish advocate of school choice is a Democrat, U.S. Senator Joseph Lieberman of Connecticut. And then there is Sam Katz, a former Democrat who last November ran as a Republican in the Philadelphia mayoralty race and was narrowly defeated in a city where the ratio of registered Democrats to Republicans is four to one; according to a study of the election, Katz gained 82 percent of the Jewish vote, including large elements of the liberal middle class. For that matter, Philadelphia's outgoing mayor, Ed

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Rendell, is also Jewish, and, though an outspoken Democrat—he currently serves as head of the Democratic National Committee—demonstrated a number of conservative tendencies during his two terms in office. Inheriting a bankrupt city, he set about trimming government by taking on the powerful municipal unions and privatizing some city functions. Toward the close of his administration, and with an eye toward a future race for governor, Rendell expressed the view that the time had come to cut nonworkers from the welfare rolls.

Finally, in the area not of electoral politics but of attitudes and opinions, the picture is once again more variegated than it might seem. American Jews do continue to maintain many traditional liberal postures: more so than other Americans of their socioeconomic profile, they support government spending programs and are resistant to curtailing already existing ones. They also tend to voice liberal views on a broad range of issues involving civil liberties and sexual morality. As successive studies undertaken for the American Jewish Committee (AJC) have shown, most Jews are pro-abortion and pro-gay rights, and most oppose government aid to parochial schools. But as these same surveys suggest, there are countervailing tendencies at work as well.

Thus, in the 1997 AJC survey, 80 percent of respondents favored the death penalty for persons convicted of murder (a rise of six percentage points from 1994). Sixty percent disagreed with the proposition that women, blacks, or members of other disadvantaged groups should receive "special consideration in hiring and promotions as a matter of policy." A high proportion felt that today's increased emphasis on separate group identities—whether racial, ethnic, or religious—was dividing American society. On welfare, Jews did not differ markedly from other whites in asserting that government programs were detrimental to their beneficiaries. Perhaps most surprisingly of all, even as Jews have continued to vote heavily for Democrats in presidential elections, the most recent (1999) AJC survey suggests that approximately half now categorize themselves as either Republicans, independents, or unsure, suggesting that even the seemingly unshakable Jewish vote may be up for grabs.

WHAT ACCOUNTS for these shifts? In part, the answer is demography and other socioeconomic factors. For decades now, Jews have been moving away from the central cities that once produced large Democratic majorities. During the last 30 years, for example, the Jewish population of New York City has declined from two million to just under a million, with those who remain having become more geographically concentrated and also more sharply polarized along religious lines. At the same time, there has been an influx into this country of Jews from the former Soviet Union. One of every five Jews in New York City today was born in the former USSR; in California, considerable numbers of ex-Soviet Jews reside in West Hollywood, Santa Monica, and the San Fernando valley. A comprehensive study of Russian Jewish immigrants in New York released early this year showed strong support for Mayor Giuliani (and for President Clinton, mainly for the obvious economic reasons), and a lesser inclination to associate with the Democratic party than has been the norm for American Jews.

The vocational profile of Jews has likewise changed significantly. Civil service, once the route to upward mobility, has become less attractive. With a lowered stake in public-sector employment, Jews are commensurately less likely to favor expansionary government programs. As Mitchell Moss, a professor of urban planning at New York University, has put it, "Most Jews in New York are concerned with safety, quality of life, and taxes, not public schools and social services, the two largest areas of municipal expenditures."

There are indications, too, that younger Jews are beginning to shape their political worldview along somewhat different lines from their parents or grandparents. For the current generation, which knew not JFK, let alone FDR, even the civil-rights and anti-Vietnam movements of the 60's have no real resonance. A poll taken by the Zogby organization during the New Jersey gubernatorial election in 1997 showed that Jews under sixty-five were significantly more likely to vote for the Republican Christine Todd Whitman than were those over sixty-five.

But the most critical factor in the changing Jewish political posture is that, as a community, Jews seem to be turning inward. What we are witnessing today is a hunkering-down—not so much an indifference to the less fortunate as a growing recognition that solutions to society-wide problems are more complex than they may once have seemed, and that even as one must try to remedy such problems it is also necessary to look after one's own. Jews are also becoming more defensive. At the most basic level, they know that historically they have prospered in periods of order and stability, and they sense instinctively that our own times are dangerous—not only for them, but for the broader social and cultural values (like merit) that have underlain their rise in America. Closely associated with this growing defensiveness is an increased focus on internal issues, especially questions of group solidarity and group survival.

The most striking illustration of this inward turn can be seen in the dynamism of Orthodoxy—the only branch of Judaism, as Jack Wertheimer has pointed out in these pages, that is experiencing natural growth.* But the perceived breakdown in societal morality and of

* "The Orthodox Moment," COMMENTARY, February 1999.

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once-widespread educational norms has also affected Reform and Conservative Jews, some of whom are in the process of expanding or setting up their own parochial school systems and drifting, however tentatively, toward more traditional forms of religious practice.

So unmistakable are these particular signs of change that they have even begun to affect the institutions of the organized community, once the very heartland of Jewish liberalism. Last June, James S. Tisch, president of the UJA Federation of New York, and Stephen D. Solender, its executive head, wrote to the Jewish Council of Public Affairs (JCPA), the national umbrella group of religious and civil Jewish agencies, charging that in its routine identification with liberal causes the JCPA was no longer in tune with the views of broad numbers of American Jews. "We are concerned," the two officials declared, "that JCPA's public position on such issues as affirmative action, school vouchers, universal health care, and quality affordable housing no longer represent how many in our community believe the Jewish community's positions ought to be represented." Five weeks later, the president of the Jewish federation of metropolitan Chicago chimed in, warning the JCPA that changes were in order "before matters get even worse." It has been a long time since such frankly ideological grumblings have risen to the surface of Jewish organizational life.

WHAT ALL this means is that politically Jews are becoming more like other Americans who share their social and economic profile—and also, be it said, somewhat more like American Jews of the pre-New Deal era, before the wholesale shift of the community into the liberal-Democratic camp. Regardless of party affiliation, Jews today are increasingly willing to give their support to politicians who adopt conservative positions on public issues, at least so long as this does not preclude a "moderate" stance on such bellwether issues for Jews as immigration, abortion, gay rights, and the separation of church and state.

This last caveat is crucial. Last December, Frank Luntz, a top Republican pollster, opined to a Jewish policy group that, historically, Republicans had erred in demonstrating "too much anger and not enough heart for the typical Jewish voter." The way to address Jewish concerns on this score, Luntz seemed to be suggesting, was through the rhetoric of "compassionate conservatism" being espoused by Governor George W. Bush.

Style, however, is only part of the problem. The AJC's 1999 survey indicates that Jews continue to have doubts about how they are perceived by their neighbors. Indeed, despite the place they have won in American society, they feel that anti-Semitism is still the greatest problem facing them today. They are thus clearly turned off not only by efforts on the part of Christian evangelical groups to proselytize among them but even by such gestures as Governor Bush's having named Jesus Christ as his favorite philosopher, to say nothing of his effort to keep Patrick J. Buchanan within the GOP fold.

Whether this means that more Jews might be drawn to a maverick candidate along the lines of Senator John McCain is an open question. But it does serve to remind us not only of the rather eclectic nature of the new Jewish conservatism (it is hard, for example, to imagine Jews in any number voting for a conservative like Trent Lott) but of the extent to which American conservatism itself is in a fluid state and up for redefinition. Perhaps for that very reason, the most intriguing litmus test of the changing Jewish political profile may turn out to be not the 2000 presidential contest but the senatorial race in New York between Hillary Clinton and Mayor Rudolph Giuliani, which pits a woman who embodies many of the classical liberal ideas to which American Jews have long pledged their allegiance against a man who expresses most saliently the particular combination of new ideas with which many of those same American Jews have recently become more comfortable.

Four years ago, in another attempt to take the political temperature of the American Jewish community, the sociologist Earl Raab wrote that if you scratch an American Jew, you will find, as ever, a Democratic voter—but that "if you scratch somewhat deeper, you will not always find a liberal."* His words carry still greater force today, when, at least at the local level, you are also decreasingly likely to find a Democratic voter. Where we go from here remains to be seen.

* "Are American Jews Still Liberal?," COMMENTARY, February 1996.

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MUSIC

The Soul of Marian Anderson

Terry Teachout

In 1935, the black American contralto Marian Anderson gave a song recital at the Salzburg Festival. Arturo Toscanini was in the audience, and afterward he told her, "What I heard today one is privileged to hear only once in a hundred years." Four months later, Anderson returned to the U.S., where she quickly became one of this country's most successful classical singers, appearing in concert with such noted conductors as Dimitri Mitropoulos, Pierre Monteux, Eugene Ormandy, and Bruno Walter. Managed by Sol Hurok and recorded by RCA, she broadcast regularly on network radio, and her recitals sold out from coast to coast.

Though the color of Anderson's skin figured prominently in everything written about her, she was praised by critics not merely for having overcome the stigma of racism but for her artistry as well. While her performances of the religious songs then known as "Negro spirituals" were central to her popular appeal, she was no less widely admired as an interpreter of German *lieder*, and by all rights she should be remembered as among the very first American-born classical singers to have had major international careers.

But the recordings Anderson made in the 30's and 40's, the years of her vocal prime, went out of print in the 50's, and remained for the most part unavailable until quite recently. As a result, she is now known not so much for how—and what—she sang as for *where* she sang. In 1939, having previously been denied access to Washington's Constitution Hall, she gave a federally sponsored, open-air concert on the steps of the Lincoln Memorial before an audience of 75,000; in 1955, she became the first black singer ever to perform with New York's Metropolitan Opera.

These two events made Anderson a world-famous symbol of black aspiration and achievement, but at the cost of effacing the achievements on which that fame was originally based. It is specifically to redress that imbalance that Allan Keiler, a professor of music at Brandeis University, has written *Marian Anderson: A Singer's Journey*, the first scholarly biography of Anderson.* Undertaken with the full cooperation of the singer (whom Keiler interviewed in 1992, shortly before her death), this straightforward and meticulously researched book does precisely what it sets out to do:

> I felt that the legend of Marian Anderson was now so deeply anchored in our social consciousness that it has thrown a long shadow over her achievements as an artist, and . . . I wanted to write a biography in which Miss Anderson's art would remain at the center of her legacy.

MARIAN ANDERSON was born in 1897, the eldest of three daughters. Her grandparents were freed slaves from Virginia; her parents, who moved to Philadelphia, were hard-working, middle-class churchgoers. She began singing in the choir of South Philadelphia's Union Baptist Church at six. Even as a child, she had an extraordinarily wide-ranging voice—nearly three octaves. Since the music directors of black churches were often highly gifted artists

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* Scribner, 447 pp., $30.00.

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prevented by segregation from pursuing performing careers, she was closely supervised from her earliest years by competent musicians equipped to recognize the full extent of her natural gifts.

Anderson's father died when she was twelve, and thereafter she lived with his mother's family in severely straitened circumstances. Unable even to go to high school, let alone study voice, young Marian instead worked to support the family, pouring her energies and frustrations into her singing. In time, various Philadelphia church congregations raised the money for her to return to school and work with a voice teacher; by 1916, she was appearing professionally in concert and oratorio.

Within the black community, Anderson was soon acclaimed as a major artist, but on the rare occasions when her performances were covered by white newspapers, praise for her singing was invariably tempered with the comment that her interpretations were uninvolved and superficial. The accuracy of these criticisms is borne out by a group of spirituals she recorded in 1924 for Victor: "Go Down, Moses" reveals that her youthful voice already has unusual tonal richness, but her reading of the powerful lyrics is blankly dispassionate.*

Anderson knew she needed a change, and in 1927 she used her savings to go to Europe, searching for teachers who could pull her out of her provincial rut. In Europe her race was mainly seen as a novelty rather than an impediment, and she slowly began to win critical acclaim. But upon returning to the U.S., and despite the support of the powerful American manager Arthur Judson, she was unable to establish herself solidly as a concert artist. (Because of her race, opera houses were closed to her.) The problem, as before, was that her temperament was naturally phlegmatic. As one critic astutely noted:

> If the young woman's voice is in itself of an emotional timbre, at moments almost capable of coaxing tears to the listener's eyes, one is repeatedly conscious, nevertheless, of a want of ingrained emotional temperament behind her singing.

In 1930, the Rosenwald Fund, a philanthropic organization started by the Chicago financier Julius Rosenwald that sent talented black artists abroad, gave Anderson $1,500 to study in Berlin for a year. There she worked intensively with the distinguished German accompanist Michael Raucheisen and other teachers; just as important, she learned to speak German fluently, thereby making the art-song repertoire more accessible. Though she came back briefly to give concerts in the U.S., she decided to spend as much time as possible singing and studying in Europe, and by 1934 was widely recognized there as an important artist.

THE FLAMBOYANT Russian-American impresario Sol Hurok, who had heard Anderson in Paris, now persuaded her to make him her manager, and at the end of 1935 she returned to the U.S. to give a recital at New York's Town Hall.

Though a previous Town Hall concert in 1924 had met with mixed notices, this one was different. "Let it be said at the outset: Marian Anderson has returned to her native land one of the great singers of our time," Howard Taubman wrote in the *New York Times*. RCA promptly signed her to a contract—she recorded her first 78's for that label just two weeks later—and President Roosevelt invited her to sing at the White House in February. Contrary to popular belief, she was immediately embraced by white audiences, soon becoming one of America's most popular concert artists; under Hurok's skillful management, she earned $238,000 in 1938, the equivalent of nearly $2.7 million today.

Anderson recorded regularly from 1936 on, making it possible to discern just how her singing had changed as a result of her European studies. What one hears on her prewar 78's is a true contralto voice of exceptional size and tonal depth, with a fast vibrato and a plangent, even melancholy timbre. She had lightened her upper register skillfully in art song, but was also capable of singing well below the staff with staggering ease—the low D she sings in Schubert's "Death and the Maiden" is still capable of startling unprepared listeners.

The reticence noted by Anderson's earliest critics never fully left her. Her platform manner was famously dignified, and she mostly avoided explicitly sensual music (her postwar recording of Richard Strauss's "*Morgen*," for example, is handsomely sung but emotionally staid). But in such works as Schubert's "*Ave Maria*" or the Brahms Alto Rhapsody, her essential seriousness is at one with the character of the music, enabling her to achieve a high degree of emotional identification with composer and listener alike.

Throughout her career, Anderson programmed spirituals side by side with the classics, in the same way that the tenor John McCormack, in recital, would follow songs by Hugo Wolf and Sergei Rachmaninoff with Irish ballads. These spirituals she performed in the "classicized" arrangements of such black musicians as Edward Boatner, Lawrence Brown, Harry T. Burleigh, and Hall Johnson, deploying a deeper, more heavily covered voice than the one she used for art songs. Over time, her use of these two sharply differentiated "voices" would lead to technical problems, but in the 30's and 40's she was able to switch from one to the other without difficulty.

Some critics have suggested that Anderson was more comfortable with black spirituals than with European art songs (she sang virtually no American classical music). Though

* Currently available CD reissues of Anderson's recordings, including the 1924 version of "Go Down, Moses," are listed in the discography at the end of this essay.

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there is nothing lacking in her performances of Schubert or Brahms, it is true that she brought to spirituals a special sense of commitment: listeners of all races responded with fervor to such standbys as "Crucifixion," "Deep River," and "Tramping," in which it was impossible not to draw a parallel between the sufferings of enslaved antebellum blacks and their lot under the latter-day reign of Jim Crow. In a 1950 film of Anderson singing "Crucifixion" that has been reissued on videocassette, this sequence, shot almost entirely in tight close-up, is shattering in its intensity.

A 1946 *Time* cover story about Anderson, written by Whittaker Chambers, made memorable reference to her interpretation of this song:

> She stands simply, but with impressive presence, beside the piano. She closes her eyes (she always sings with her eyes closed). Her voice pours out, soft, vast, enveloping. . . . Audiences who have heard Miss Anderson sing "Crucifixion" have sometimes been too awed to applaud. They have sensed that they are participants in an act of creation—the moment at which religion informs art, and makes it greater than itself.

Though the world of opera remained closed to Anderson, this circumstance, paradoxically enough, may have worked to her artistic advantage. Like John McCormack, she appears to have had no feel for the particular kind of theatricality required by opera (her few aria recordings, though well-sung, are undramatic). That she was forced to concentrate on the recital stage inadvertently made it possible for her to play exclusively to her strengths. But historical circumstances would soon force her to play on a far wider stage.

AT NO time was Anderson anything but a reluctant political activist. Likewise, as Allen Keiler makes clear, the events leading up to her legendary 1939 performance at the Lincoln Memorial were in no way her doing.

As a result of the Great Depression, the U.S. concert circuit had contracted. The fact that most Southern recital halls were off-limits either to Anderson or to black audiences was thus financially disadvantageous as well as morally outrageous. (In 1938, the only Southern state in which Anderson performed was Texas.) Hurok was understandably eager to find a way to open up the South to one of his most profitable clients, and Washington, D.C., seemed to him the most likely place to start.

Though Anderson had already sung in Washington under the auspices of the all-black Howard University, Hurok wanted to book her into a larger house before an unsegregated audience. The logical venue was the 4,000-seat Constitution Hall, the city's largest indoor concert space, but the owners, the Daughters of the American Revolution (DAR), enforced a "white artists only" clause in all management contracts, and when Howard University requested an exception for Anderson, the hall's manager refused.

The NAACP then stepped in, launching a publicity campaign intended to embarrass the DAR into allowing Anderson to perform at Constitution Hall. But the group stood firm, even after Eleanor Roosevelt publicly resigned as a result of its prosegregation stance. Following an abortive attempt to arrange a recital in the auditorium of an all-white local high school, Hurok had the idea of presenting an unsegregated outdoor concert; Walter White, the NAACP's executive secretary, suggested that it take place at the Lincoln Memorial, and Secretary of the Interior Harold Ickes promptly authorized an Easter Sunday performance.

All the players in this drama had agendas of their own. Hurok knew that such a concert would be of incalculable publicity value. Ickes hoped that blacks, who then voted Republican en bloc, could be induced by such symbolic gestures to support the Roosevelt administration. Anderson, who was on tour, disingenuously claimed that she knew nothing of the controversy until Eleanor Roosevelt resigned from the DAR, but in fact she was fully aware of what her manager had in mind, and by all accounts was terrified by it.

Yet the actual event proved to be a pivotal moment in the history of American race relations. An unsegregated audience of some 75,000 people—including two U.S. Supreme Court Justices, three members of the Roosevelt cabinet, and four senators—packed the mall in front of the Lincoln Memorial as Anderson and her Finnish accompanist, Kosti Vehanen, performed a half-hour program of songs and spirituals that was broadcast nationwide by NBC. Part of the concert survives in newsreel footage, and it is still unutterably moving to watch the visibly frightened but nonetheless determined Anderson step before the vast crowd and sing "America," changing the words from "of thee I sing" to "*to* thee *we* sing."

IRONICALLY, ANDERSON'S transformation into an icon of racial equality occurred just as her singing was starting to lose its youthful bloom, a process accelerated by an over-hectic performance schedule. As early as 1940, the critic B.H. Haggin noted that her voice "was threadbare and had a strong vibrato. This was due partly to the fatigue of the season's 90 or 100 concerts, which represented her manager's lack of conscience and her own lack of good sense."

In the next season Hurok scaled back her schedule, and she began to work with the great German accompanist Franz Rupp, formerly Fritz Kreisler's pianist, under whose wise guidance she performed and

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recorded for the remainder of her career. But the fundamental flaw in her technical method—the unequalized break between her upper and lower registers—became more pronounced over time, and by the early 50's she had started to have trouble singing in tune.

Anderson had one last triumph ahead of her. Rudolf Bing, the Viennese impresario who took over the Metropolitan Opera in 1950, was determined to break the company's color bar, and after first hiring a black dancer, he contracted with Anderson for her first stage role, Ulrica in Verdi's *Un Ballo in Maschera*. It was, she admitted to Bing, the first operatic role she had ever learned from start to finish, and the demands of the part (including an exposed high A) were fearsome for an aging singer.

Still, she felt obliged to accept the challenge, and on January 7, 1955, less than two months before her fifty-eighth birthday, she made her Met debut in the company of Zinka Milanov, Roberta Peters, Richard Tucker, and Leonard Warren. A commercial recording of her aria made two days later shows that though her vibrato had loosened considerably, she still managed to sing with creditable style.

Anderson appeared seven more times at the Met before going back permanently to the recital stage, touring Asia under the auspices of the U.S. State Department, and returning to the Lincoln Memorial in 1963 to sing "He's Got the Whole World in His Hands" as part of the same march on Washington at which Martin Luther King, Jr. gave his "I Have a Dream" speech. She retired from singing in 1965, and though she continued to appear in public, narrating Aaron Copland's *Lincoln Portrait* with poise and authority, she spent most of her later years caring for her ailing husband, dying peacefully in 1993 at the age of 96.

It is impossible to know what Anderson made of her transformation from artist into icon. Intensely private and not notably introspective, she seems more than anything else to have been embarrassed by the sequence of events that brought her to the steps of the Lincoln Memorial in 1939. As Allan Keiler writes:

> Many years later, in responding to a young girl who had written to her inquiring about what had happened . . . Anderson explained that a concert she was scheduled to give had to be postponed, and that Mrs. Roosevelt then invited her to sing at the Lincoln Memorial. She was not merely simplifying the complex and troubling events of a period in her past for a young person who might not yet be ready to understand their full meaning. She was, in fact, indulging herself in a memory of the events as she wished them to be.

Her reluctance to address such matters directly is consistent with the tenor of her life. By both background and temperament, she was a member of what the black sociologist E. Franklin Frazier called the "black bourgeoisie." Disinclined to public protest, she instead sought conventional respectability; at a time when most black musicians of her generation were interested in popular music, she pursued against overwhelming odds a career as a classical singer, measuring herself against traditional standards that today would be casually dismissed by many blacks (and many more liberal whites) as "Eurocentric." When she did sing the music of "her people," it was in the smoothly polished arrangements of an earlier era.

It is arguable that her pursuit of dignity at all costs—a perfectly understandable response to the refusal of many whites to treat any black, however talented, with respect—may have limited her as an artist, just as it has limited other black artists of similar temperament, including the classical singers Leontyne Price and Jessye Norman and the actor Denzel Washington. Sometimes it could even become embarrassing, as when she used the royal "we" in speaking of herself, a mannerism that grew more frequent as she grew older; certainly it narrowed her expressive range as a singer.

All this might tempt the well-meaning listener to make allowances for Anderson, in the same way that the culture of affirmative action destructively applies double standards of excellence whenever blacks compete against whites. Yet no such allowances need be made. Now that her best recordings are finally being reissued on CD, it is possible to hear that she was a supremely gifted artist, blessed with a resplendent voice that she used with intelligence and sensitivity.

It is, of course, impossible to listen to her without recalling the role she played, however inadvertently, in the civil-rights movement. But that, too, is more of a blessing than it may seem at first glance. For to consider Anderson's career dispassionately is to recognize that she was struggling for the truest kind of equality: the unrestricted opportunity to strive for the very highest goals. And when she took her postrecital bows hand in hand with Kosti Vehanen or Franz Rupp, she made a statement on behalf of human rights—and the universality of Western culture—more eloquent and powerful than a thousand incendiary speeches. At a time when the ties that bind our multicultural society have grown fearfully loose, it is thus especially useful to reflect on the life and work of Marian Anderson, and on the hope that her unforgettable example still offers for a better future.

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Marian Anderson on CD: A Select Discography

RCA, FOR which Marian Anderson recorded exclusively between 1936 and her retirement three decades later, has yet to undertake a systematic reissue of her recordings (many of which were never released in the first place). In the past few years, though, several well-engineered CD anthologies have appeared:

Marian Anderson, recorded between 1929 and 1936 and newly remastered by Roger Beardsley, contains arias by Handel, Verdi, Tchaikovsky, and Saint-Saens; songs by Bach, Giordani, Martini, Schubert (including "*Ave Maria*" and "Death and the Maiden"), Schumann, and Brahms; Finnish folk songs; and four spirituals (including "Deep River" and "Tramping"), some accompanied by orchestra and others by the pianist Kosti Vehanen (Pearl GEMM 9318).

Marian Anderson, recorded between 1924 and 1955, contains an aria from *Un Ballo in Maschera* accompanied by Dimitri Mitropoulos and the Metropolitan Opera Orchestra, recorded in 1955; oratorio arias by Bach and Handel; songs by Brahms, Schubert, Schumann, Strauss (including "*Morgen*"), and Rachmaninoff, mostly accompanied by the pianist Franz Rupp; the 1945 remake of Brahms's Alto Rhapsody, Op. 53, with Pierre Monteux and the San Francisco Symphony; and three spirituals, including "Crucifixion" and "Go Down, Moses," the latter recorded in 1924 (RCA Victor 7911-2-RG).

Spirituals, recorded between 1936 and 1952, contains 30 songs, mostly accompanied by Franz Rupp (RCA Victor 09026-63306-2).

Rare and Unpublished Recordings, 1936-1952 contains 26 arias, songs, and spirituals accompanied by Vehanen and Rupp, including Strauss's "*Befreit*" and an unpublished Brahms "Four Serious Songs" from 1952, with liner notes by Allan Keiler (VAI Audio VAIA 1168).

Anderson's original 1939 recording of the Brahms Alto Rhapsody with Eugene Ormandy and the Philadelphia Orchestra is coupled with three orchestrally-accompanied Brahms songs performed at the same sessions, plus the Op. 91 songs with viola, recorded in 1941 with Rupp and the violist William Primrose (Biddulph LAB 150).

Schubert and Schumann Lieder, recorded between 1945 and 1951, contains 13 Schubert songs, two Schumann songs, and the complete *Frauenliebe und -leben*, Op. 42, all accompanied by Rupp (RCA Victor 09026-63575-2).

Marian Anderson: On Stage and At Home, a 1950 film documentary in which Anderson and Rupp can be seen performing Handel's "*Begrüssung*," "*Ave Maria*," and four spirituals—"Crucifixion," "Deep River," "He's Got the Whole World in His Hands," and "Oh, What a Beautiful City"—has just been released on videocassette (VAI 69226).

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Books in Review

Power Failure

Deliver Us From Evil: Peacekeepers, Warlords, and a World of Endless Conflict

by William Shawcross

Simon & Schuster. 416 pp. $27.50

Reviewed by
Robert Kagan

THE BRITISH journalist William Shawcross, like many members of Tony Blair's Labor party (and like many members of the Clinton administration), cut his political teeth protesting against the Vietnam war. *Sideshow*, his 1979 book about the U.S. intervention in Cambodia, leveled the nasty, and appalling, accusation that Richard Nixon and Henry Kissinger bore direct responsibility for the murderous rampages of the Khmer Rouge. American attacks on North Vietnamese positions in Cambodia, Shawcross argued, had "created the conditions, the only conditions, in which [the Khmer Rouge] could grow."

In the 1970's, the world was a simple place for liberals like Shawcross. Great-power interventions in "civil wars" like Vietnam's, however cloaked in the rhetoric of good intentions, were immoral. Power was evil, American power especially. But then, in the 1990's, these liberals of the 60's generation finally took power themselves—seeking to use it, of course, not to do evil like Nixon and Kissinger but to do good. With the threat of Communism gone, *their* interventions would be undertaken for the purest of motives, and by the purest of means. They would be selfless, and, what is more, they would be performed not by nations—with their hopelessly parochial interests—but by the "international community," under the legitimizing rubric of the United Nations.

It was thus no doubt an especially unpleasant surprise when the exercise of power even on the part of pure-minded liberals turned out to be no less messy and morally complicated than actions taken by any of their predecessors. Somehow, UN mandate or no, perfect "justice" in a place like Bosnia could never be achieved. Somehow, the most benevolent policies could have the most unfortunate consequences. Somehow, the "tragedy of American diplomacy," to use the phrase of the revisionist historian William Appleman Williams, at whose knee many of these liberals had studied, was the tragedy of diplomacy practiced under international auspices as well: in the exercise of great power, even for noble ends, the rights of weaker peoples are always trampled.

THIS RUDE awakening to reality provides the underlying theme of Shawcross's new book, *Deliver Us From Evil*. In it, he leads the reader on a rapid tour through the international crises of the 1990's. Touching down at one moment in Iraq to view the United Nations' failed efforts to root out Saddam Hussein's weapons, at the next he takes us to Cambodia, where international efforts produced a generally fair election that was then undermined by Hun Sen's seizure of power, then on to Bosnia, Kosovo, Rwanda, Sierra Leone, and East Timor—places

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where the international community responded to crises slowly or not at all, with results that ranged from the disastrous to, at best, the partially successful.

In order to prepare his account of these crises, Shawcross traveled the world with UN Secretary General Kofi Annan. He also interviewed a number of the undeniably heroic people—the "lightly armed UN peacekeepers with ambitious mandates, unarmed monitors, humanitarian-aid workers from nongovernmental organizations, election officials, and UN volunteers"—who make their living trying to remedy human tragedies at the behest of the "international community." Indeed, Shawcross wants us to try to view the world through the eyes of these overworked, underpaid, much-maligned, and often forgotten civil servants; he begins his book with a brief but moving account of one of them, Fred Cuny, who seems to have singlehandedly saved hundreds if not thousands in Sarajevo and elsewhere until he became a victim himself of the Russian assault on Chechnya.

But if Shawcross's approach is thus somewhat novel, when it comes to assessing these "fragments . . . of the entire picture of keeping peace in the post-cold-war world," he is as short on conclusions as he is long on narrative. It is not just that one can find better, and more enlightening, accounts of many of these individual crises elsewhere. (For his portrait of the Balkan conflict, for instance, Shawcross depends in part on a series of articles by Mark Danner in the *New York Review of Books* from which a reader would learn more not only about Bosnia but also about the general issues of American and international efforts to address the post-cold-war world.) It is that, hopping from one part of the world to another, Shawcross engages in little if any comparative analysis and makes virtually no effort to relate the lessons learned from one crisis to those learned from another.

Even the interesting idea of telling the story of the civil servants and volunteers who do the dirty work in international crises turns out to be of doubtful value in explaining world events. To describe international affairs through the eyes of Kofi Annan is a little like covering a baseball season through the eyes of baseball commissioner Bud Selig. Although Shawcross, like other liberal commentators these days, seems to think that big "nation-states" are increasingly irrelevant in the modern world, his own book proves precisely the opposite. The more deeply he involves us in the lives and preoccupations of international civil servants, the more we find ourselves wondering what is happening in the centers of *real* power.

To be sure, in a very brief prologue and equally hasty concluding chapter Shawcross does ponder the meaning of it all. But what he comes up with is less than revelatory. Surely we are past needing to be reminded that interventions in the name of "humanitarianism" do not always achieve an entirely humanitarian purpose; or that television—the so-called "CNN effect"—can spur sometimes unwise efforts to alleviate human tragedies; or that nations often talk an altruistic game when it comes to working within international institutions but then selfishly look out for themselves when the going gets rough. Not only is this banal, it is singularly unhelpful in determining what nations actually should or should not do in the many and varied crises that have erupted and will continue to erupt around the world.

On that broad question, Shawcross himself is ambivalent, if not confused. At one moment, he actually seems to argue *against* international "humanitarian" intervention altogether, questioning its legitimacy as well as its efficacy. He approvingly repeats a comment by the British historian Michael Howard about the misfortunes that would have ensued had the European pow-

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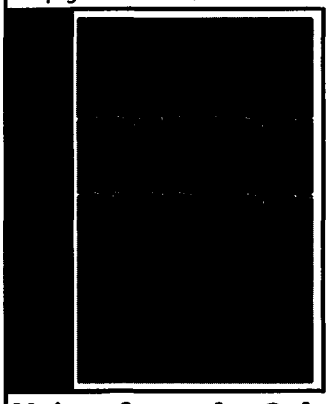

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ers intervened to stop the American Civil War before the North succeeded in defeating the Confederacy. "If," Shawcross muses, "the prospect of having their conflict 'managed' for them by foreigners (however well intentioned) would have been unwelcome to the American people then, why should it be more acceptable to other peoples in the world today just because the motives of those who believe fervently that 'something must be done' are often decent?" He also finds intriguing the argument by the American policy analyst Edward Luttwak that it is better to let some wars run their course, since foreign meddling can have the result of perpetuating the conflict that sparked the war in the first place. "Humanitarianism," Shawcross concludes, "can be dangerous."

Many an American conservative these days would agree. But Shawcross is no conservative. Nor is he prepared to accept the consequences (or let others accept the consequences) of Howard's and Luttwak's hardheaded doctrines. And so, after complaining about the dangers of the "humanitarian" impulse, he insists that "overall," his dismal account of the past decade's interventions is really "a hopeful story" in the end; that the international community is "making progress"; and that what is needed is not less humanitarian intervention but more, and better:

> To be humane, humanitarianism must last for more than the fifteen minutes of attention that each crisis is accorded these days. . . . intervention must be consistent; it must be followed through.

Fair enough; and yet, no sooner has he delivered himself of this pronouncement than he warns us once again that "Not everything can be achieved, not every wrong can be righted, simply because the international community desires it."

Ultimately, what all this back-and-forth amounts to is little more than an exercise in liberal handwringing. The events of the last ten years have chastened many liberals of Shawcross's generation into a more mature sense of what can and cannot be achieved by intervention, and also given them a much more skeptical view of what the "international community"—as opposed to the powerful democratic nations—can do. Armed with these insights, they have more or less soldiered on. But to judge by this book, in at least some members of his generation these same events appear to have instilled so many doubts and uncertainties as to render them, in effect, paralyzed. In true 60's fashion, the only thing left is to raise those very doubts and uncertainties aloft as a badge of superiority—infinitely preferable, in any case, to accepting the inevitable costs, moral as well as political, of action.

Revelation for Moderns

Beyond Reasonable Doubt
by Louis Jacobs

Littman Library of Jewish Civilization/ Vallentine Mitchell. 267 pp. $39.50

Reviewed by
David Singer

THE "JACOBS AFFAIR," which took place in England 40 years ago, caused a stir in Jewish life that still reverberates today. In immediate terms it involved an institutional struggle within British Orthodoxy. But its true significance was religious, lying in the confrontation between the contending forces of tradition and modernity and going to the very foundation of Jewish belief and practice.

The "affair" began in 1959, when Louis Jacobs, a brilliant and dynamic young Orthodox rabbi, was appointed tutor at Jews' College, the seminary for modern-Orthodox clergymen in England. Jacobs, in fact, was slated to become head of Jews' College, but he ran afoul of a

DAVID SINGER *is editor of the* American Jewish Year Book.

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campaign of vilification centering on theological heresies he had allegedly committed in his 1957 book, *We Have Reason to Believe*. In the end, he was forced to depart from Jews' College and then left the Orthodox rabbinate altogether, entering upon a dual career as a pulpit clergyman (at a breakaway congregation) and a prolific author of books on Jewish law and theology. Today, Jacobs and his congregation are affiliated with Conservative Judaism.

Although Jacobs was accused of heresy, the irony is that *We Have Reason to Believe* was written as a defense of Orthodoxy in the context of modern thought. Jacobs's views about God, the chosen people, miracles, and the afterlife passed without a murmur; what got him into trouble was his discussion of revelation. Taking note of modern biblical criticism, which challenges the idea that the Pentateuch, and hence the religious observances mandated by it, are Mosaic in origin, Jacobs urged Orthodox Jews to keep an open mind, arguing that in any case the historical status of the commandments is a separate issue from the question of their binding nature. Even absent a direct revelation of the Torah to Moses, observance of *halakhah*, religious law, would continue to be obligatory for Jews.

Today, Jacobs acknowledges that he was "naively trusting and optimistic" in imagining that he could put forward a modernist conception of revelation without provoking the wrath of mainstream Orthodox Jews. After all, the Bible itself states that God revealed the Law to Moses, and no lesser a figure than Maimonides includes this idea among the "essentials" of Judaism. Clearly, in enunciating his views, Jacobs was entering a theological minefield.

But now, more than four decades later, Jacobs has returned to the fray in a book that is billed as a direct sequel to *We Have Reason to Believe*. If in the intervening years he has altered his views about some minor elements in the Jacobs "affair," he is as insistent as ever on his central contention, namely, that openness to biblical criticism and commitment to Jewish religious law are fully compatible. The difference is that he no longer seeks to validate his position as Orthodox but instead identifies with the "historical school" of Conservative Judaism. From that standpoint, he polemicizes against Orthodox "fundamentalism" and in favor of his own theological stance, which he labels "liberal supernaturalism."

The heart of Jacobs's critique of Orthodoxy finds expression in the words, "beyond reasonable doubt." Modern critical scholarship, he maintains, has authoritatively established that the Pentateuch is a "composite work produced at different periods in the history of ancient Israel." Yet Orthodox

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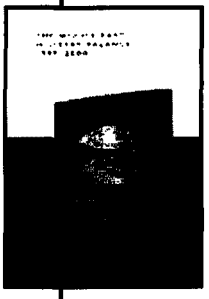

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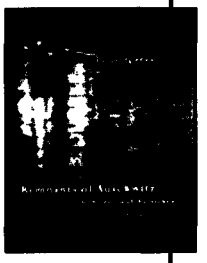

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Jews simply ignore this incontrovertible finding, clinging instead to a fundamentalism that is both "unscientific and unhistorical." Jacobs finds such a position quite incredible, especially when it is embraced by modern-Orthodox Jews who in all other respects "embrace [secular] learning wholeheartedly."

Pointed as is Jacobs's critique on this matter, it can hardly be said to break new ground. What is vitally fresh in *Beyond Reasonable Doubt* is, rather, his attempt to tease out a positive theological program—liberal supernaturalism—centering on a Judaism that moves "beyond fundamentalism" but is at the same time rooted in *halakhic* commitment. The Jew who is a liberal supernaturalist, Jacobs writes,

> is liberal in that his reason compels him to adopt the historical-critical approach and its implications, even though this involves a degree of rejection of the traditional view. He is a supernaturalist because he sees no reason to deny the supernatural elements of his religion. . . . God is for him the living God and the precepts of the Torah divine commands, albeit these are conveyed indirectly and with human cooperation.

But what exactly are "divine commands . . . conveyed indirectly and with human cooperation"? As a theological liberal, Jacobs does not anchor revelation in the text of the Pentateuch. Instead, he anchors it more generally in the historical experience of the Jewish people. For him, the term revelation applies to the "sum total of Jewish teachings, in which our ancestors reached out haltingly to seek God's will and to be found by Him." Or, as he puts it in a succinct formulation, "God gives the Torah not only to the Jewish people, but through the Jewish people."

By placing the historical Jewish people at the center of his theory of revelation, Jacobs is able to present Judaism as an evolving religion, something that clearly makes sense from the modern standpoint. In addition, he is equipped to account for certain inconvenient features of Jewish tradition—like biblical slavery, or the position of women in ancient Judaism—by attributing them to historical contingency. Most crucially, Jacobs's people-centered perspective enables him to provide a rationale for religious observance that sidesteps the issue of biblical criticism and the direct communication of the commandments to Moses. "Practical observances of Judaism have as their sanction that this is how the Torah has been developed by human beings in response to the divine will," Jacobs argues, adding, confidently, "God is behind the whole process."

This may sound as if Jacobs has moved closer to the position of Reform Judaism, but that is emphatically not so. Despite his differences with Orthodoxy, he remains a traditionalist, both intellectually and temperamentally, and continues to place an absolute priority on religious observance. Reform, as Jacobs sees it, has gone too far in its "accommodation to the Zeitgeist," in its lack of "fixed Jewish ethical standards," and in its rejection of the *halakhah* as "essentially binding." As a lived religion, Jacobs bluntly asserts, Reform lacks "any real appeal from a Jewish point of view."

LIKE OTHER books by Jacobs, including *Principles of the Jewish Faith* (1964), *Theology in the Responsa* (1973), and *A Tree of Life* (1984), *Beyond Reasonable Doubt* brims with scholarship and is powerfully argued. Jacobs's mastery of the full range of Jewish religious sources—legal, philosophical, and mystical—is apparent on every page, and is well deployed in making his case for liberal

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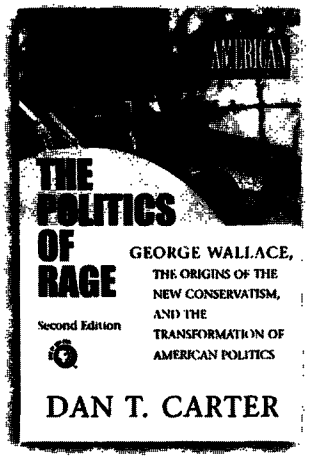

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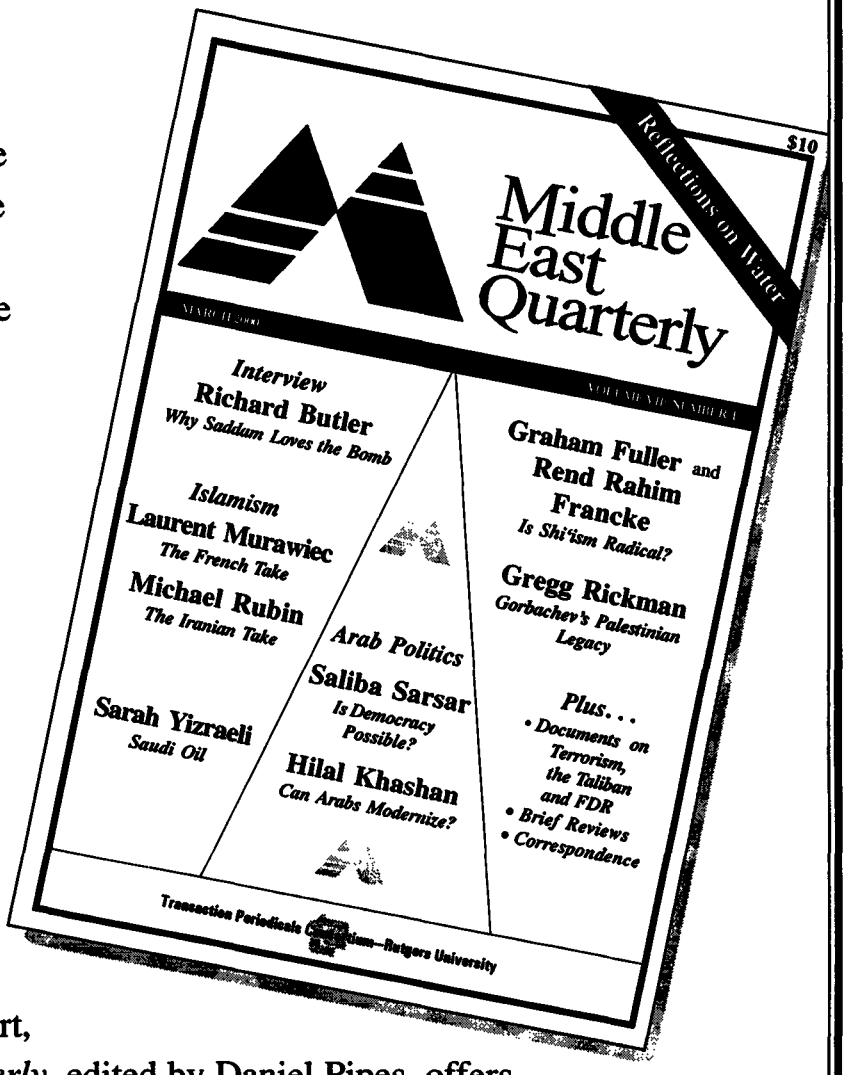

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supernaturalism as a breakthrough religious synthesis. And that case is a timely one, for Jacobs is hardly alone in hungering for a form of traditionalism that can combine *halakhic* observance with an open intellectual outlook. Indeed, this is today the shared meeting ground of the right wing of Conservative Judaism and the left wing of the Orthodox movement.

Still, it needs to be recognized that Jacobs's own working-out of the issues remains highly questionable. At several points in *Beyond Reasonable Doubt*, he himself notes that "liberal supernaturalism also has its problems." Truth to tell, they are very severe.

At the level of practice, and also of religious psychology, indirect revelation proves no substitute for direct revelation in generating loyalty to the details of Jewish law. Jacobs himself explains why this is so, although he fails to think through the implications:

> Psychologically, it is undeniable that a clear recognition of the human development of Jewish practice . . . is bound to produce a somewhat weaker sense of allegiance to the minutiae of Jewish law. [The Orthodox Jew] will go to the utmost limits . . . to keep every detail . . . since they are part of what God has directly commanded him to do. But the Jew who sees the . . . laws as having evolved, although he too, may acknowledge them, in a sense, to be divinely ordained . . . will find it more difficult to be so scrupulous.

Liberal supernaturalism also opens the door to selective observance. If one believes, with Jacobs, that Jewish law carries the mark of history, is it not reasonable to assume that elements of that law may be deemed out of date or primitive from the standpoint of the present? And if so, should not the observant Jew of today, acting out of sincere religious conviction, feel free to set them aside? Amazingly, Jacobs embraces this very position, arguing that for those not caught in the "fetters of mechanical fundamentalism," a degree of selectivity is inevitable. (The example he gives is of an individual who will turn on an electric light on the Sabbath but refrain from using electricity to cook.) Although he acknowledges that a Jew who behaves this way is "not operating within the boundaries of the *halakhah*," his actions should still be deemed legitimate.

It is at the level of theory, though, that liberal supernaturalism is in danger of unraveling completely. The main challenge confronting Jacobs is the secularization of contemporary Jewry. What does this phenomenon mean for his people-centered theory of revelation? If a majority of Jews today reject not this or that particular of Jewish law but the system as a whole, is that, too, to be deemed a species of revelation? And if so, is Jacobs prepared to discard vast sectors of the law that are without meaning for most present-day Jews? Or does he propose, alternatively, to deny these Jews their voice in determining the *halakhic* consensus?

A similar question arises in considering the wider social and cultural values espoused by many if not most non-Orthodox Jews today. To Jacobs, it is "hard to see how homosexual 'marriages' can be condoned if Jewish values are taken into consideration." Yet the Reform movement is set to endorse just such a step, even as the Conservative movement considers it with increasing sympathy. In both denominations, advocates of this move validate their stance by invoking, precisely, Jewish values, and they appear to be fully sincere in doing so. Is this, too, the voice of revelation speaking through the Jewish people?

LOOKING BACK after more than 40 years at the factors that precipitated his "affair," Jacobs writes that he "found no real difficulty with Orthodox practices. It was only the

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theory behind fundamentalist Orthodoxy that I could no longer accept." Alas, his determination to seek a form of robust but nonfundamentalist traditionalism that will fully satisfy "both mind and heart" has led him into a theological no-man's land.

This is a matter of deep regret. In day-to-day terms, obviously, traditionalist Jews of the nonfundamentalist stripe will continue to work out, with varying degrees of success, their accommodations with modernity. But what their traditionalist endeavor desperately lacks is a conceptual framework that will justify it both intellectually and religiously, establishing its legitimacy within the context of Jewish belief and practice and guiding its future development. If the brilliant and pious Louis Jacobs has been unable to provide such a framework, is there reason to believe that anyone else can?

Left Behind

The Other American:
The Life of
Michael Harrington
by Maurice Isserman
Public Affairs. 400 pp. $27.50

Reviewed by
Arch Puddington

For a brief spell in the mid-1960's, Michael Harrington was regarded as one of America's most influential social critics. Thanks to his first major book, *The Other America* (1962), he was credited with having "discovered poverty." Among those impressed by his analysis of widespread destitution in the midst of abundance were government officials who later in the decade would plan the details of President Lyndon Johnson's War on Poverty. Harrington himself was to play a modest role in the formulation of that initiative.

It was not, however, as a policy intellectual that Harrington's many admirers saw his real role, but rather as the leader of a broad coalition for radical change that would bring together such disparate forces as student activists, the civil-rights movement, and organized labor. He was, as one newspaper put it back then, "a vital voice of conscience for our times." Seldom have such high expectations been invested in a man of the American Left.

Yet within a few years, Harrington's reputation was in serious and perma-

Arch Puddington *is vice president for research at Freedom House. His new book,* Broadcasting Freedom: The Cold War Triumph of Radio Free Europe and Radio Liberty, *is forthcoming from the University Press of Kentucky.*

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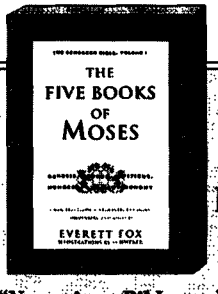

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nent decline. Although he wrote book after book laying out the case for the coming demise of capitalism and the inevitable triumph of socialism, none made an impact on the American political debate, not even when Harrington returned to the issue—poverty—that had made him famous. He was an even greater failure as a political leader. Although treated with respect by intellectuals, political figures, and advocates of various liberal causes, his ideas and his political movement were ignored.

A study of Harrington's career is thus principally of interest for what it reveals about the collapse of left-wing politics in the United States. Unfortunately, readers seeking enlightenment on this score will not find it in Maurice Isserman's biography. In writing *The Other American*, Isserman, a professor of history at Hamilton College in New York, an erstwhile 1960's radical, and the author of previous books highly sympathetic to both the American Communist movement and the New Left, has clearly let his activist inclinations get the better of his scholarship.

MICHAEL HARRINGTON was born in 1928 into an Irish-Catholic family in St. Louis. Raised in a strongly Catholic environment, he attended a Jesuit-run high school and a Jesuit university, Holy Cross. When he moved to New York in the 1950's, his initial political involvement was as a volunteer in the Catholic Worker Movement that had been founded by the legendary radical Dorothy Day and was centered on a commitment to the poor and a militant form of pacifism. Harrington, who avoided soup-kitchen duty whenever possible, spent his days writing for the organization's newspaper and his nights drinking at the White Horse tavern among Greenwich Village writers, folk singers, and their female admirers.

Harrington soon left both the movement and the church for a new cause: socialism. He joined the youth wing of a small organization of anti-Communist radicals led by Max Shachtman, one of 20th-century America's more fascinating left-wing figures, who gravitated from orthodox Communism to Trotskyism and finally to a fiercely independent form of anti-Soviet socialism. What the Shachtmanites lacked in numbers (they never amounted to more than a few hundred activists), they made up for in dedication and intellectual firepower; the movement produced more than its share of notable writers and academics, along with leaders of trade unions, civil-rights organizations, and, by the 1980's, as some former members shifted rightward, officials in the Reagan administration.

In the late 1950's, when Harrington caught up with them, the Shachtmanites had merged with the Socialist party—the venerable and much-faded institution of Eugene V. Debs and Norman Thomas. Many believed that Harrington—young, an effective polemical writer and platform speaker, and able to project an open, engaging, middle-American image—was destined to succeed Thomas as America's leading socialist. Harrington's ability to "speak American" was also useful in light of the new strategy Shachtman had devised to broaden his movement's influence and appeal. No longer would socialists seek elective office as a separate body; instead, they would join together with allies in the labor movement, liberal organizations, and the black community to wrest control of the Democratic party from the coalition of urban machine politicians and Dixiecrats that had for so long functioned as an obstacle to reform.

AS THE 60's dawned, the political environment seemed propitious for the Left and for Harrington personally. The civil-rights movement had inspired a new generation of student activists in colleges throughout the country, fertile recruiting terrain for a movement

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grounded in a realistic assessment of American political conditions. And Americans generally seemed open to new political ideas, as witness the reception accorded *The Other America*.

Fissures, however, began to appear with the rise of the student movement and the New Left. Almost from the outset, the Shachtmanites and other veteran socialists were offended by the younger generation's arrogance and elitism, and were especially appalled by the willingness of the student radicals to open their ranks to Communists. At the Port Huron conference, where the Students for a Democratic Society (SDS) issued its initial manifesto, Harrington engaged in a heated argument over the issue of Communist participation in the organization; after Tom Hayden and other SDS leaders refused to alter their policy, the trade-union body that had been sponsoring SDS, of which Harrington was chairman, padlocked the student group's offices.

Harrington himself, however, remained torn between his apprehensions over the New Left's ultraradicalism and a desire to retain his credentials as unofficial leader of the American Left. He also had political differences with Shachtman, and these widened with the escalating war in Vietnam (which the Shachtmanites declined to condemn). The final break came in 1973, when Harrington resigned from the Socialist party and formed yet another organization, Democratic Socialists of America (DSA).

From the split with Shachtman until his death from cancer in 1989, Harrington devoted his energies to building his new party and the socialist movement. He resolved the conflict over his past criticism of the New Left by embracing many of the ideas he had previously spurned and by apologizing, again and again and again, for his failure to identify with the young radicals and their causes. Although he never abandoned his critical stance toward the Soviet Union, he veered toward a position of cold-war neutralism; emblematic of his evolution was his participation in a group sponsored by the Socialist International to "defend" the Nicaraguan revolution at a moment when the antidemocratic leanings of the Sandinistas were on full display.

Harrington also worked for the continued left-wing realignment of the Democratic party by joining in coalitions with new political forces—feminists, gays, environmentalists. Although he exerted less influence on the Democrats than those who were more explicitly representative of identity politics, he did contribute to the party's leftward shift in those decades and its increasing estrangement from the values of the American electorate.

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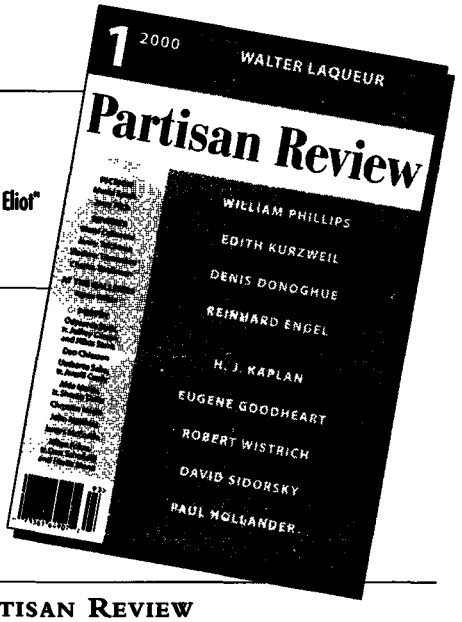

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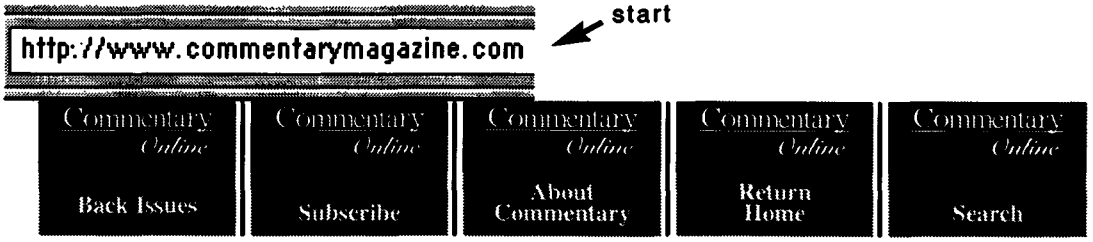

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For a man with his obvious abilities, Michael Harrington left a remarkably thin legacy. Isserman recognizes this, but to him, the fact that Harrington's "heroic" vision failed to catch on is attributable at least in part to the profound flaws in America's political culture. Also weighing in the balance, in Isserman's view, was Harrington's reluctance to embrace fully the rising generation of 60's activists; had he been less quick to condemn the mistakes of the young, he might have helped push the student movement toward a more responsible and therefore more successful brand of radicalism.

Isserman is at particular pains to lambaste Harrington's Shachtmanite adversaries. Their unwillingness to join in condemning the Vietnam war he ascribes to the desire to ingratiate themselves with the AFL-CIO, in the hope of gaining influence and jobs in the only liberal institution where anti-Communists were still welcome. He singles out the black civil-rights activist and trade-union organizer Bayard Rustin, a one-time Harrington friend, for special opprobrium as a self-serving manipulator and lackey of organized labor.

This is tendentious nonsense. For one thing, a genuine reconciliation between Harrington and the leaders of the SDS was never in the cards. Tom Hayden and his comrades were nothing but contemptuous of sympathetic liberals who failed to endorse the organization's radical program, and would have treated Harrington with disdain as long as he continued to reject (however faintly) their view of America as a sick and murderous society or to criticize (however faintly) their infatuation with third-world tyrants.

As for the anti-Communism of the Shachtmanites, Isserman's refusal to acknowledge the moral basis of their position, though perfectly in line with his own unflagging New Left commitments, is inexcusable in a historian who, at this late date, still fails to acknowledge the horrific costs of Communism around the world and, most relevantly, in Vietnam. Similarly off the mark, and similarly disgraceful, is Isserman's treatment of Bayard Rustin. Unlike the New Left, Rustin tempered his once radical ideas, recognizing that blacks could progress only if they abandoned utopian notions of socialist transformation or Black Power, and came to terms with the realities of the American political and economic system.

This view was as reasonable back in the 1960's and 70's as it is today—and it makes an instructive contrast with the ideas about poverty held

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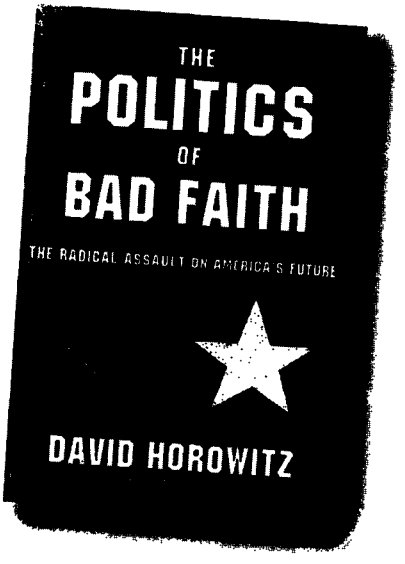

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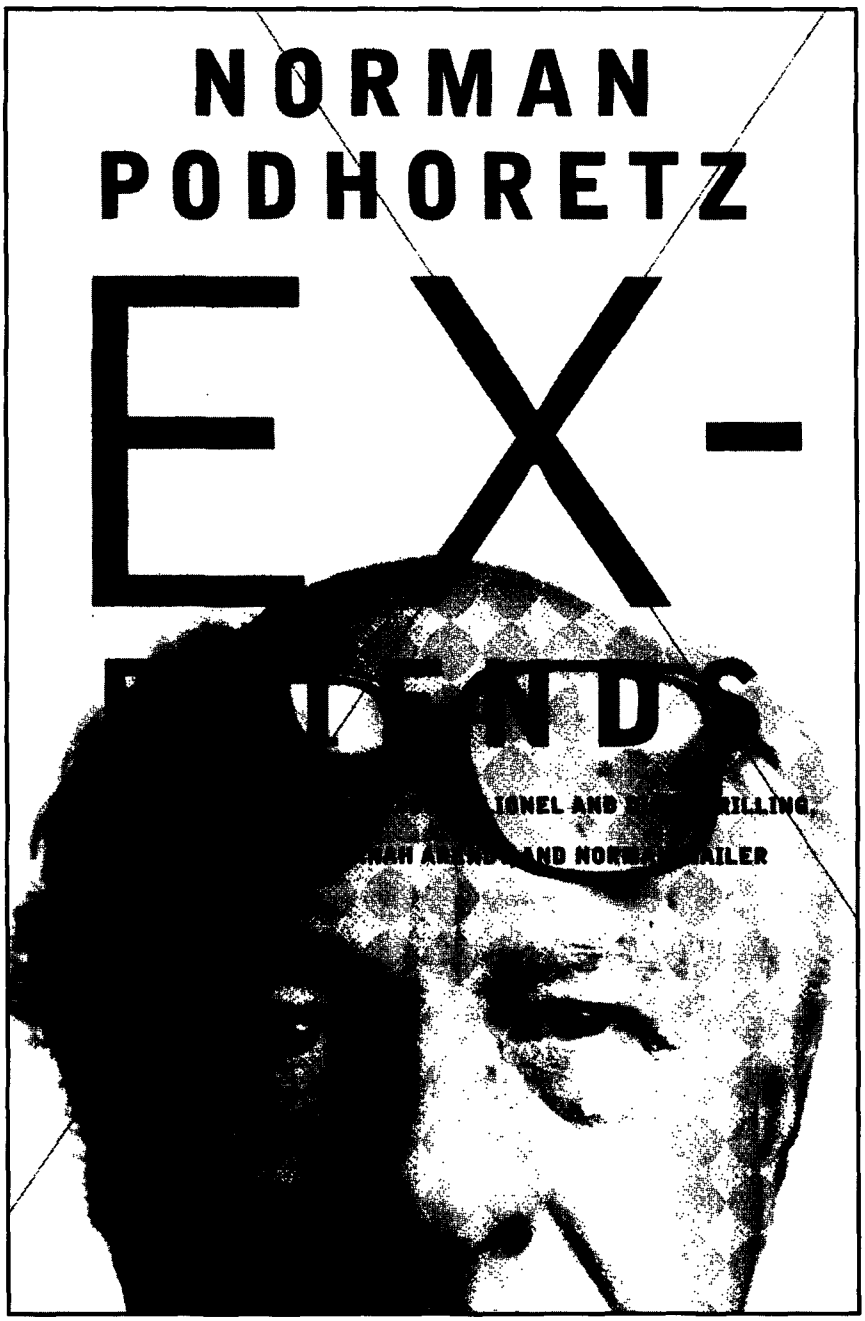

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by Harrington. In *The Other America*, Harrington frequently referred to a seemingly intractable condition called the "culture of poverty," a concept he borrowed from the radical sociologist Oscar Lewis. Among those designing Lyndon Johnson's War on Poverty, this notion fell on the ready ears of some who aimed at transforming the condition of the poor not by creating jobs but through "community action" and similar strategies of "empowerment." The result was that the "invisible poor" about whom Harrington had written were replaced by the "participatory" poor, who, egged on by radical academics, clamored for an ever-expanding list of government benefits. With welfare rolls rising dramatically in an era of near-full employment, public and political support for the antipoverty program soon evaporated.

Again in contrast to the pragmatic Rustin, Harrington remained an unwavering socialist to his dying day. By socialism, Harrington meant something more far-reaching than the watered-down social democracy that prevailed in Sweden, Germany, and other European countries. As he never tired of declaring, the American socialism he favored would be democratic, yes, but major sectors of economic life would be subject to collective decision-making; economic planning would be the order of the day.

Harrington clung to this creed to the very end, throughout a period when socialism, democratic or otherwise, became increasingly irrelevant to the problems of America and the world, and downright dangerous when embraced by third-world despots. As in so many others, the search for the perfect solution to the planet's ills had produced in him a form of mental ossification, until in the end he too fell victim to the idea of which he had been such an ineffectual evangelist. There is a deep and affecting story here, but Maurice Isserman is unqualified to tell it.

Open & Shut

The Trouble With Principle
by Stanley Fish
Harvard. 328 pp. $24.95

Reviewed by
Adam Wolfson

Of all the controversial figures in today's academy, Stanley Fish perhaps tops the list. An English professor and Milton scholar by training, Fish first achieved celebrity by helping to develop "reader-response" theory, the idea that literary texts have no meaning apart from what readers bring to them. Then came his famed chairmanship in the late 1980's of the once-sleepy English Department at Duke, where he gathered around himself a veritable vanguard of fellow postmodernist theorists. More recently, Fish has become a dean at the little-known branch of the University of Illinois at Chicago, where—for an astonishing annual salary of $230,000—he has already begun to hire the hottest professors in cutting-edge fields like "queer studies."

Nor has Fish hesitated to go on the attack when the radical ideas with which he is associated have been challenged. At Duke, he raised a furor when he denounced the National Association of Scholars—a respected organization of over 2,000 tradition-minded academics—as racist, sexist, and homophobic, and called on the university to blacklist any professor who joined. On the op-ed page of the *New York Times*, he has defended contemporary "scholarship" on "body parts, excretory functions, the sex trade, dildos, bisexuality, transvestism, and lesbian pornography," accusing those who do not want public dollars to support such work of not "know[ing] anything except what they don't like."

In light of Fish's colorful record

Adam Wolfson *is executive editor of the* Public Interest.

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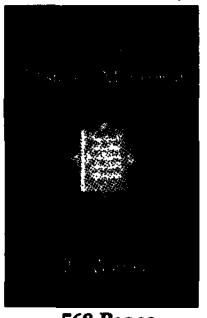

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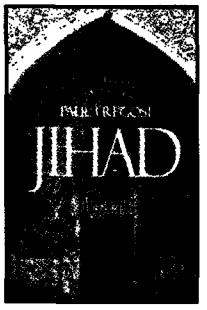

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of service to the academic Left, it has come as something of a surprise to some readers that his latest book is a far-reaching critique of . . . academic liberalism. Has Fish changed his mind, or switched sides? Far from it. But even while providing further evidence of the destructiveness of his own ideas, he does have many worthwhile things to say about his less radical peers and colleagues on the Left.

Fish's main target in *The Trouble With Principle* is the influential school of liberal thought developed by such well-known theorists as John Rawls, Ronald Dworkin, Amy Gutmann, and Jürgen Habermas. What unites these writers—and their many followers, especially in legal circles—is a deep commitment to the principle of "neutrality," that is, to the idea that the essence of liberalism is to be open to all points of view and ways of life.

As Fish convincingly shows, however, this pose of neutrality is little more than a sham, a rhetoric of tolerance that often serves as a cover for intolerance. Thus, for instance, Gutmann—the director of the University Center for Human Values at Princeton—welcomes fundamental disagreements among the members of a liberal community, but only so long as these disagreements are "intellectual" in character—a qualification, Fish points out, that allows her to banish from public discussion those whose opinions about blacks and homosexuals she happens to find abhorrent. Similarly, Habermas, Germany's leading social theorist, finds no room in "civilized debate" for religious fundamentalists. As Fish dryly notes, "It is a strange openness indeed that is defined by what it peremptorily excludes."

Fish uses a number of court cases on freedom of speech and religion to demonstrate how liberalism's claim of neutrality is, in practice, a smokescreen for its own brand of intolerance. One of his favorite examples involves a born-again Christian named Vicki Frost, who sued her daughter's public school because it assigned a textbook whose respectful treatment of all religions, according to Frost, undermined her daughter's beliefs. In response, the school contended that the purpose of the textbook was not to indoctrinate the child but simply to expose her to a variety of viewpoints, preparing her to make her own choices.

Needless to say, the school's argument prevailed. But as Fish observes, the distinction between "indoctrination" and mere "exposure" invoked by the school, and accepted by the court, is hardly a neutral one. Rather, it is part and parcel of liberal ideology, and reflects a commitment to the distinctive liberal ideal of "autonomous decisionmaking." That ideal frankly discriminates against a religious believer like Vicki Frost, who could not possibly want her daughter to treat all opinions as equally likely to be true; she wants her daughter to be taught the Truth.

The point of all this, as Fish hastens to say, is not to give aid and comfort to religious believers, or for that matter to conservatives. To the contrary, Fish objects to the idea of neutrality in large part because he thinks it is useful to the other side. It disarms liberals, giving them a bad conscience for wanting to suppress patriarchal, authority-bound religions, or for wishing to keep the neo-Nazis from marching in Skokie or pornographers from publishing material harmful to the interests of women. Worse, neutral principles can be turned directly against liberal policies, as when critics of affirmative action appeal to the need for a color-blind society.

In the end, Fish's complaint against liberals is not that, despite their

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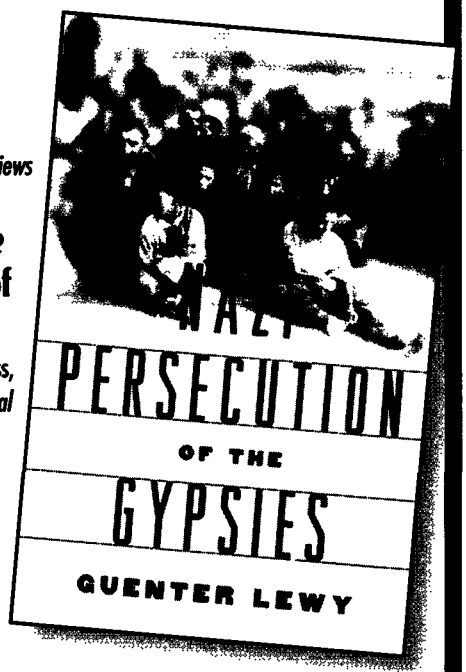

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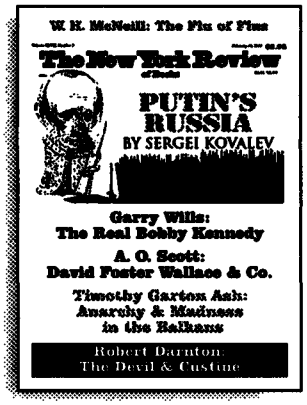

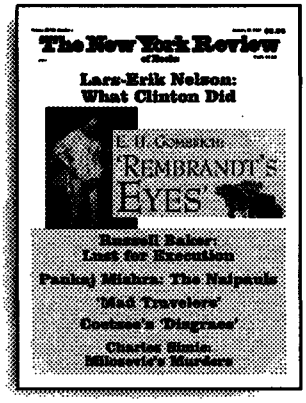

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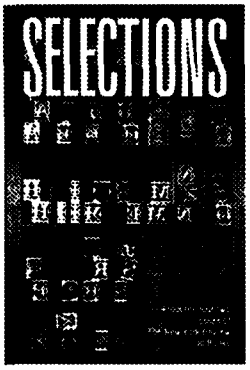

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rhetoric, they are intolerant; rather, it is that they are not intolerant *enough*. As he says of Amy Gutmann, her "instinct to exclude is the right one," but

> her gesture of exclusion is too tame—it amounts to little more than holding her nose in disgust—and falls far short of wounding the enemy at its heart. A deeper wound will be inflicted only by methods and weapons her liberalism disdains: by acts of ungenerosity, intolerance, perhaps even repression, by acts that respond to evil not by tolerating it . . . but by trying to defeat it.

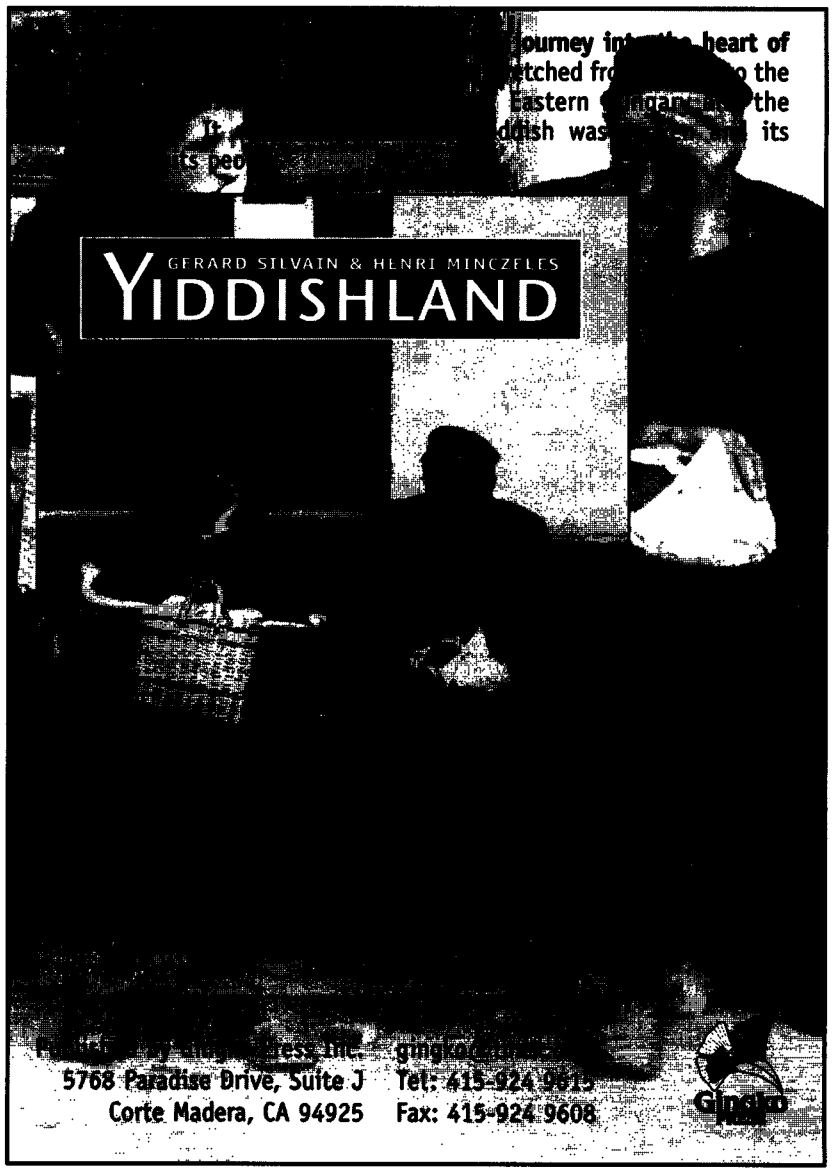
Fish wants a morality of ends, not means. His guide, he tells us, is Machiavelli.

Nor is that all. The deeper problem with neutral principle, as Fish never tires of saying, is that no such thing exists. We are, he insists, "socially constructed" beings, "embedded" selves, and cannot stand above our desires and goals; we can only acknowledge them, whatever they should happen to be, and live them out. Pretend though we may to transcend the particulars of our own situation, appeal though we may to reason, moral truth, or justice, our lives, Fish concludes, consist of nothing but "ideology and politics."

There is much to recommend in *The Trouble With Principle*, not least the wit and elegance with which Stanley Fish punctures the pretensions of modern liberalism. One only wishes that more professors were capable of writing, for example, that the ACLU is "that curious organization whose mission is to find things it hates and then to grow them," or that a liberal public forum is one in which "you can't say kike and you can't say God."

But Fish's major premise—that contemporary liberalism as a whole has somehow become fastidiously and self-destructively devoted to principle—is unconvincing. Indeed, American liberals have shown great flexibility in recent decades when their ostensible ideals have collided with their political ends. Fish's claims notwithstanding, the principle of color-blind justice has done little to prevent liberals from embracing forced busing, lower academic standards for minorities, and racial preferences, nor have their scruples about freedom of speech and religion kept them from advocating speech codes at our universities and branding religious believers as "zealots" and "hate-mongers." More recently, when sexual-harassment law might have destroyed the Clinton presidency, liberals were notable for standing not by their supposed principles, but by their man.

One might point to any number of reasons for this sorry turn in American liberalism. But one of them surely has been the gradual dissolution in elite culture of any belief in transcendent standards, political or otherwise. When truth itself is thought to be "relative"—a product simply of one's time and place—ideals begin to lose their hold, giving a freer rein to mere prejudice and self-interest. What Stanley Fish fails to see, in other words, is that his ideas—and those of oth-



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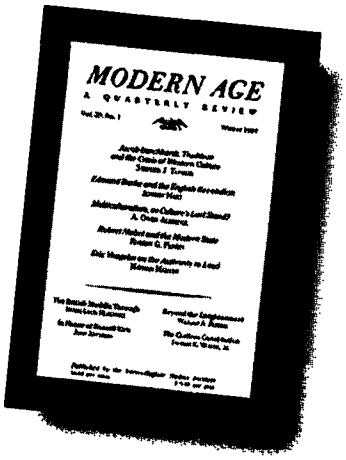

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ers like him—have long since helped to create on the American Left the very ideology of power that he accuses it of lacking. Whether this fact is, as he would have it, a cause for celebration, and whether liberals should be grateful to him for calling attention to it, are a different matter.

Anti-Red Menace

Joseph McCarthy: Reexamining the Life and Legacy of America's Most Hated Senator
by Arthur Herman
Free Press. 404 pp. $26.00

Reviewed by
James Nuechterlein

All conservatives are anti-Communists, but they are not all anti-Communists of the same kind. Over the years, conservatives have disagreed among themselves not only on how to deal with the Communist threat but even on the precise nature of that threat. But over no issue have their disagreements been more pointed or heated than the career and legacy of Joseph R. McCarthy, the notorious junior Senator from Wisconsin whose name has become synonymous—at least on the Left—with the entire anti-Communist cause of the post-World War II period.

The majority of conservatives, it seems fair to say, have concluded that McCarthy's demagoguery blighted the anti-Communist movement. Accordingly, they have distanced themselves from the "McCarthyism" that, in the mouths of anti-anti-Communists then and since, has become a term of abuse for the struggle against the Communist threat. But there have always been dissenters from this general consensus, and in his new book, Arthur Herman, an adjunct professor of history at George Mason University, argues their cause. From Herman's pages, Joseph McCarthy emerges, for all his faults, as more sinned against than sinner, and his cause as one to which, with some reservations, good people had reason to repair. Seldom, surely, has there been a less promising venture in historical revisionism.

Joseph McCarthy was elected to the Senate in 1946, but he first impinged on the nation's consciousness with a speech on February 9, 1950 in Wheeling, West Virginia. There, he claimed to have in his possession a list of 205 (or perhaps 57) known Communists (or at least security risks) employed by the State Department (or at any rate involved in the formation of foreign policy). The imprecision was typical of McCarthy: no one recorded the speech,

James Nuechterlein *is the editor of* First Things.

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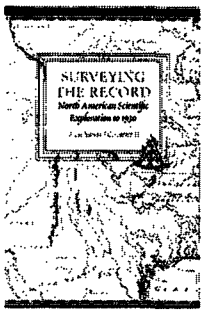

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and in subsequent references to it the Senator continuously revised just what it was he had said.

For the next four years, McCarthy's endlessly escalating charges of Communist espionage and secret influence on government policymaking were constantly in the news, and he himself was the center of a political controversy perhaps unmatched in American history for its bitterness. Then, just as suddenly as he had entered upon the political stage, he was ushered off: following his censure by the Senate in late 1954, he faded from public sight. Less than three years later, his health ruined by alcohol, he died of liver failure.

It is important to specify the nature of McCarthy's cause. By 1950, most Americans agreed that the U.S. faced, in Joseph Stalin's Soviet Union and Mao Zedong's China, a serious threat of worldwide Communist aggression, and this widespread agreement became near-unanimous after the invasion of South Korea by the North four months after McCarthy's speech in Wheeling. What made McCarthy controversial was his insistence that Communist successes in Eastern Europe, China, and elsewhere could be explained only by American perfidy.

According to McCarthy, liberals in the Roosevelt and Truman administrations had proved themselves incapable of meeting the threats of aggression abroad and subversion at home because of their ideological affinities with the Communist movement. Some liberals, he conceded, were merely naive or credulous, but others—the great majority, it seemed—were in varying degrees collaborators in the Communist conspiracy, more naturally the Communists' cobelligerents than their enemies. Or, as McCarthy put it with typical vulgarity, Democrats were at heart "Commie-crats."

Enter now Arthur Herman. In tracing McCarthy's anti-Communist career both as a member of the Republican minority and, following GOP presidential and congressional victories in 1952, as chairman of the Permanent Subcommittee on Investigations, Herman puts forward, gingerly and with qualifications, the same argument the Wisconsin Senator made so crudely. Not only does he try to see the political landscape as McCarthy saw it, an entirely defensible and even necessary enterprise in a historian, but he proceeds intermittently to offer judgments that coincide, if in gentler terms, with his subject's.

For example, in comparing the views of Adlai Stevenson during his tenure at the Agricultural Adjustment Administration in the 1930's with the views of Stevenson's fellow staffers, the Communist-party members John Abt and Nathan Witt, Herman writes:

> Liberals like Stevenson were untroubled by the radical Marxist ideas of men like Abt and Witt. In fact, they discovered that they shared a common vision of government, in which an enlightened elite would take over state agencies and use them to intervene in workings of the marketplace for good.

Or here, more generally, is Herman on the lesson McCarthy learned from liberal reaction to the Hiss case:

> [T]he New Deal establishment liberal, for all his professed anti-Soviet views, seemed unable to deal effectively with the kind of ideological challenge Communism represented. Inevitably, he would buckle and give the Communist what he wanted, thanks to his seemingly fatal attraction to the goals and aims, if not necessarily the methods, of Communism.

Herman allows that this charge might seem "absurd and outrageous," only to add a moment later that "the historical record reflected again and again the same dismal result." And he ends this chapter on an ominous note:

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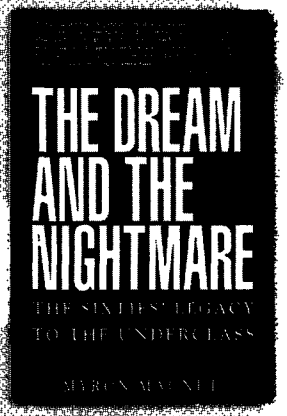
Changing the Terms of the Debate



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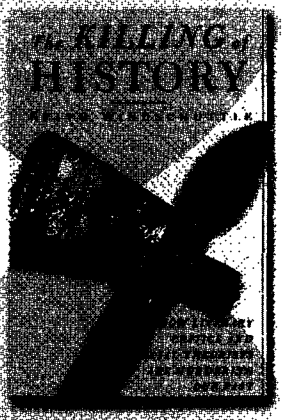

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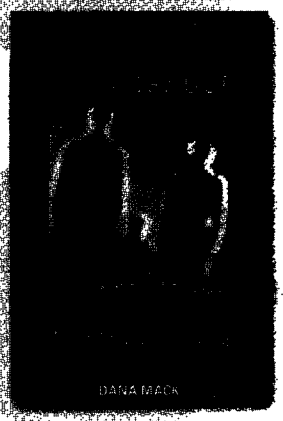

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> In his Wheeling speech, . . . McCarthy proclaimed that the most important difference "between our Western Christian world and the atheistic Communist world is not political, . . . it is moral." The question in his mind, and in the minds of many other Americans, was which side the liberals were really on.

Overall, Herman concludes that while McCarthy got a lot of the details wrong, he was more right than wrong on the central question of Communist influence on government policy and liberal complicity in that influence. He is similarly generous in describing McCarthy's behavior as a congressional investigator and political combatant. True, he duly notes—he could hardly do otherwise—McCarthy's multiple lies and distortions, habitual questioning of his opponents' loyalty and patriotism, and crude bullying tactics as an inquisitor: in short, his routine conduct of politics as mud-wrestling. But although he records McCarthy's conduct, he does not—as I have just done—characterize it, except in the most hesitant manner.

Take, as just one of countless examples, Herman's account of McCarthy's venomous attack in June 1951 on George C. Marshall, army chief of staff during World War II and Secretary of State and Secretary of Defense under Truman. Both McCarthy's brutal rhetoric ("If Marshall were merely stupid, the laws of probability would have dictated that at least some of his decisions would have served this country's interest") and his absurdly slanderous conclusion (that the general had been at the center of a conspiracy between liberals and Communists "on a scale so immense as to dwarf any previous such venture in the history of man") evoke from Herman only the astonishingly mild reproof that McCarthy had this time gone "too far." Even then, Herman cannot resist adding that "in his own unreasonable way [McCarthy] had raised a reasonable issue." But there was nothing reasonable or excusable in what McCarthy had done, and one wonders at the judgment of a biographer who cannot bring himself to say so.

When he is not excusing by faint and qualified reprimand, Herman finds other ways to extenuate McCarthy's habitually reckless behavior, giving his subject the benefit of every doubt or, where there is no doubt, retreating to *tu quoque*. Thus, Herman labors mightily to demonstrate that McCarthy gave only as good as he got, and that his liberal opponents were no less inclined to engage in "McCarthyite" tactics than was the Senator himself. It is true enough that one can find many instances of unfair behavior among a variety of McCarthy's enemies; but in the gallery of anti-McCarthyites there is no figure of comparable importance who could begin to match, in consistency or breadth, the Senator's record for demagogic behavior.

Finally, Herman argues that McCarthyism can be understood only in the context of the intense postwar struggle for control of Congress and the White House after almost two decades of Democratic supremacy. Republican conservatives seized on anti-Communism, including its McCarthyite variant, both because they believed that liberal Democrats had been, at best, "unconscionably lax" in responding to the Communist threat and because they saw it as an avenue to political advantage. Liberals, for their part—at least in Herman's view—hated and feared conservatives more than they hated and feared Communists, and they tended to see attacks on Communism as not-so-hidden attacks on themselves.

This view of the situation is by no means wholly wrong, but it is seriously oversimplified, and it distorts the author's understanding of McCarthy's career. Not a few conservatives with impeccable anti-Communist (and anti-liberal) credentials—Whittaker Chambers and Russell Kirk, for example—decided sooner or later that McCarthy's irresponsibility played into the hands of the anti-anti-Communists. By 1950, moreover, there was a serious anti-Communist movement on the Left that, duly committed to the legacy of the New Deal, nonetheless fought both McCarthy and the fellow travelers in its own ranks with equal intensity. Herman pays passing attention to these inconvenient facts but never really assimilates them into his analysis; and no wonder, for they endanger his revisionist defense of his subject.

THE IRONY of McCarthy is that he raised the specter of Communist subversion after it no longer was what it had indeed been in the era of the Popular Front: a clear and present danger to the nation's security. Conservatives of the 1950's were not wrong to criticize an earlier generation of liberals for their inadequate understanding of and response to the Communist threat, but they misread the postwar liberals' often excessive defensiveness on the subject as evidence that nothing had changed. McCarthy himself was so blind on the subject as to suggest that even the Eisenhower administration, which saw him as an embarrassment and sought to contain him, was soft on Communism. That ruined his credibility, and his political self-destruction under the withering attack of Joseph Welch in the Army-McCarthy hearings of 1954 revealed him as the anachronism he had long since become.

But it was not because of his political misjudgments or even his excessive zeal that McCarthy is remembered, in the words of Herman's subtitle, as "America's most hated Senator." He was hated because he practiced politics with a casual cruelty and an insouciant viciousness unsurpassed in our history. In the process, he came close to wrecking the anti-Communist cause he purported to advance. Had Herman paid closer attention to his own evidence, he might have come to understand that.

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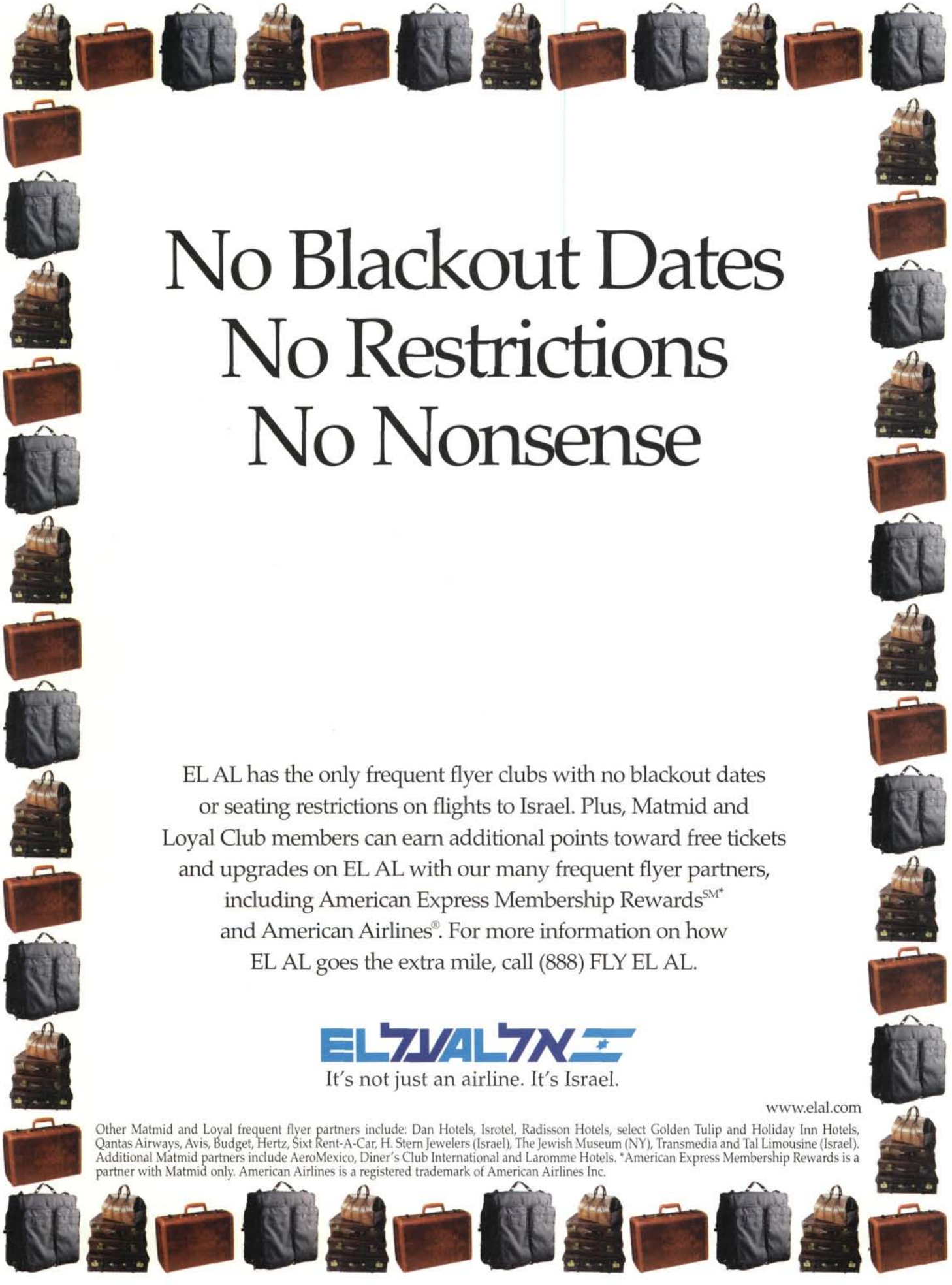

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